Congressional Record
United States
of America
PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, FIRST SESSION
Vol. 147 WASHINGTON, FRIDAY, JUNE 29, 2001 No. 93

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, July 10, 2001, at 2 p.m.

Senate

FRIDAY, JUNE 29, 2001

The Senate met at 9:00 a.m. and was called to order by the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, reign supreme as sovereign Lord in this Chamber today. Enter the minds and hearts of all the Senators. May they be given supernatural insight and wisdom to discern Your guidance each step of the way through this crucial day. Break deadlocks, enable creative compromises, and inspire a spirit of unity. Overcome the weariness of the hard work of this past week. Give these men and women a second wind to finish the race of completing the legislative responsibilities before them.

Where there is nowhere else to turn, we turn to You. When we fail to work things out, we must ask You to work out things. When our burdens make us downcast, we cast our burdens on You. If You could create the universe and uphold it with Your providential care, You can solve our most complex problems. We trust You, Father, and place the challenges of this day in Your strong capable hands. In Your all powerful name, Amen.

PLEDGE OF ALLEGIANCE

The Honorable E. BENJAMIN NELSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD, President pro tempore.

Mr. NELSON of Nebraska thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. DASCHLE. Mr. President, today the Senate will resume consideration of the Patients’ Bill of Rights. As we agreed last night, we now will have a series of rolloca votes, all of which were on amendments which were offered last night.

Additional amendments with votes are expected throughout the day. It would be my expectation to finish the bill, either today or tomorrow, and then move to the organizing resolution.

So as I understand it, under the unanimous consent agreement, the first amendment is to be taken up right now. I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

BIPARTISAN PATIENT PROTECTION ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1052, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1052) to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

Pending:

Thompson amendment No. 819, to require the exhaustion of administrative remedies before a claimant goes to court.

Warner modified amendment No. 833, to limit the amount of attorneys’ fees in a cause of action brought under this Act.

DeWine amendment No. 842, to limit class actions to a single plan.

Grassley amendment No. 845, to strike provisions relating to customs user fees, and Medicare payment delay.

Santorum amendment No. 814, to protect infants who are born alive.

* This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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So I think it is important for us to draw a line at least here. I am honest we will have unanimous support for this amendment. It is one that seems obvious on its face, but because of the courts and because of the practice in abortion clinics, it is necessary to make this statement again on the floor of the Senate.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY. We yield 2 minutes to the Senator from California.

Mrs. BOXER. Mr. President, it is nice to see you in the Chair.

I say to my friend from Pennsylvania, our side has no disagreement with this whatsoever. Of course, we believe everyone born should deserve the protections of this bill. The Senator, in his amendment, mentions infants who are born and that they deserve the protections of this bill. Of course they deserve the protections of this bill. Who could be more vulnerable than a newborn baby? So, of course, we agree with that.

But we go further. We believe everyone deserves the protection of this bill: babies, infants, children, families, all the way up until you are fighting for your life. You may have to may have to fight for your very life because you may have or may have have have a dreaded disease; you may be elderly. Everyone deserves the HMOs to act in the right way and to put your vital signs ahead of their dollar signs. That is key.

Maybe in the spirit of our Chaplain who called for unity this morning we start off this morning together, saying everyone who is born deserves the protections of this bill. We all know that, regardless of what age, we have heard stories of patients who are really disregarded in the name of the bottom line.

During times when we see CEOs in these HMOs drawing down hundreds of millions of dollars, we see little children and elderly people and those in between denied the needed care, denied the needed care, denied the kinds of prescriptions they need. We join with an “aye” vote on this. I hope it will, in fact, be unanimous. I also hope the underlying bill will get a very strong vote and we will say that all of our people deserve protection, from the very tiniest infant to the most elderly among us.

I urge an “aye” vote.

The ACTING PRESIDENT pro tempore. The motion to table was agreed to.

The bill clerk called the roll.

The result was announced—yeas 98, nays 0, as follows:

* * *

NOW VOTING—2

Domenici

Murkowski

* * *
now be 4 minutes of debate prior to a vote in relation to the DeWine amendment No. 842.

The Senator from Ohio is recognized.

AMENDMENT NO. 842, AS MODIFIED

Mr. DEWINE. Mr. President, I have a modification of my amendment at the desk. I ask unanimous consent that it be accepted.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 842), as modified, is as follows:

On page 171, between lines 14 and 15, insert the following:

SEC. 303. LIMITATION ON CERTAIN CLASS ACTION LITIGATION.

(2) EFFECTIVE DATE.—This subsection shall apply to all civil actions that are filed on or after January 1, 2002.

The ACTING PRESIDENT pro tempore. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I yield back my time.

The ACTING PRESIDENT pro tempore. Mr. President. We yield back our time.

The question is on agreeing to the DeWine amendment No. 842.

Mr. KENNEDY. The yeas and nays have been ordered.

Mr. GRASSLEY. I yield myself 1 minute.

A point was made last night that extending the user fees in section 502 has no impact on the U.S. Customs Service budget. That is baloney. If it has no impact, why is it in the bill in the first place? Obviously, it is in the bill because it has an impact on budget scoring. Once CBO scores these funds against the Patients’ Bill of Rights, these funds cannot be used by the U.S. Customs Service for customs modernization. These funds then are no longer available to offset the costs of customs modernization. We will have to find funds somewhere else; perhaps we can get them from the Health, Education, Labor, and Pensions Committee.

The U.S. Customs Service recognizes this problem: Any scoring which would limit in any way the ability to fund or offset customs activity would likely cause a critical funding shortfall in the Customs Service. I think it is very clear.

The amendment (No. 842) was agreed to.

Mr. CONRAD. Has all time been yielded back on the other side?

The ACTING PRESIDENT pro tempore. It has not.

Mr. CONRAD. I rise for the purpose of bringing a point of order; that point of order will not be available until time has been used up on both sides.

Mr. GRASSLEY. I know the chairman is going to raise a point of order, and I want 1 minute to respond to the point of order.

Mr. KENNEDY. I ask consent that the Senator be permitted to make a point of order and each side have 2 minutes to explain the point of order and 2 minutes to respond to that.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.
The Senator from North Dakota.

Mr. CONRAD. Mr. President, sections 502 and 503 of the bill help to ensure that the Social Security surplus is not affected by the costs associated with providing expanded patient protection. The bill extends customs user fees beyond 2003. That is all. The bill does not change the current nature, structure, or purpose of these fees. Customs operations will not lose funds as a result of the extension of these fees. However, the net effect of accepting the Grassley amendment would be that over $6 billion in spending contained in this bill would not be offset. That is spending that represents a transfer of funds to protect the Social Security trust fund. Deleting that offset would cause the Health, Education, Labor, and Pensions Committee to exceed its committee budget allocation.

As a result, at the appropriate time I will raise a point of order.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, there will be a point of order made. If a point of order is made, I will obviously be going to waive it. I make clear my motion to strike would essentially allow us to replace the revenues taken from the Finance Committee’s jurisdiction with general funds that are still available in the off-budget surplus. All Finance Committee members, Republicans and Democrats alike, including my respected chairman of the Senate Budget Committee, a senior member of the Senate Finance Committee, should be aware that I am against my motion a vote for weakening the Finance Committee’s jurisdiction. If your membership on the Finance Committee means anything, you need to vote in favor of my motion to strike.

Mr. CONRAD. Mr. President, this goes beyond the question of jurisdiction. This is the first test of fiscal discipline in this Chamber. Do we adhere to the Budget Act or do we abandon fiscal discipline? That is the question on this vote. We are going to spend money that is not offset and thereby violate the allocation that has been made to this committee and exceed the allocation that has been made to this committee? I hope this body will stick with the Finance Committee budget allocation.

As a result, at the appropriate time I will raise a point of order.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. I move to waive the point of order under section 904 of the Budget Act. I ask for the yeas and nays.

With the extension of these fees, I ask for the yeas and nays.

The point of order under section 904 of the Congressional Budget Act of 1974. I ask for the yeas and nays.

Mr. GRASSLEY. The motion to lay on the table was made, I am obviously going to sustain the point of order.

The motion to lay on the table was made. The Clerk will call the roll.

The legislative clerk called the roll. The Yeas and Nays were ordered taken, resulting—yeas 46, nays 52, as follows: [Roll Call Vote No. 210 Leg.].

The PRESIDENT pro tempore. The Yeas are 46, the Nays are 52, as follows:

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The PRESIDING OFFICER. The Senator from Nebraska.

Mr. ENsign, Madam President, this morning the Senator from North Dakota got up and spoke about a young man by the name of Chris Roe from my State. He said this young man’s parents would have been covered under this bill. But according to the Department of Labor, the protections in this bill do not apply to collective bargaining agreements. Because Chris Roe’s parents were under a collective bargaining agreement—

The PRESIDING OFFICER. The Senator’s time has expired.

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, this is language on page 173. It is basically boilerplate language, which means we have used identical language in the HIPAA program and also in OBRA, the pension reform. It is basically out of respect for contracts. If you read the language it says “for plans beginning on or after October 1.” “For plans” refers to insurance. Most of the insurance, 60 percent of insurer plans start in January: 40 percent go on until the next year. So this will apply at the first opportunity when those plans expire and also when collective bargaining expires.

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The PRESIDING OFFICER. The Senator’s time has expired.
as a way of addressing respect for contracts.

I hope the Nickles amendment will be defeated. We give assurance to the membership that the follow-on amendment will say that each contract has to be done within 2 years and that there is no possibility, even within that period of time, for a rollover agreement.

Madam President, I move to table the Nickles amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MUKOSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 211 Leg.]

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The motion was agreed to.

Mr. KENNEDY. Madam president, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay the table was agreed to.

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate in relation to the Brownback amendment No. 847.

Who yields time?

The Senator from Kansas.

Mr. BROWNBACK. Madam President, I want to say that I will not be requiring a vote on this amendment. At the end of a short statement, I will ask unanimous consent that the vote be vitiated. I am doing this because a number of people who looked at this amendment have said they are very interested, intrigued, and supportive, but they are not sure about the language. I think it needs to be tightened up some and reviewed again.

Indeed, the chairman stated to me his desire to look at this issue in further depth later in the year. That is why I will be pulling this from a vote. We are talking about prohibiting the taking of human material from outside the human species and injecting it into the human species, to where it can be passed on to future generations.

I point out to my colleagues that this is the modern face of eugenics, the desire to create perfect people, as if we can become a biologically perfectible artifact. This is a dangerous thing. It is an ugly thing that has reared its head in history previously, and its modern face involves taking genetic material from outside the human species and injecting it into the human species, to where it can be passed on to future generations.

I ask unanimous consent that the rollcall vote on the Brownback amendment be vitiated and that the amendment be withdrawn.

THE PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 849

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate in relation to the Ensign amendment No. 849.

Who yields time?

The Senator from Nevada.

Mr. ENSIGN. Madam President, I am going to ask unanimous consent in a moment to temporarily lay this amendment aside so we can work out the language. There seems to be support on both sides of the aisle for this amendment. There is just slight disagreement on the language.

I ask unanimous consent that my amendment No. 849 be temporarily laid aside to recur at the concurrence of the bill managers.

THE PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 850

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate on amendment No. 850 by the Senator from Nevada.

Mr. ENSIGN. Madam President, we can actually have a vote on this amendment. This amendment is about protecting bill managers who voluntarily give of themselves, give of their services, and this amendment will protect them from being sued.

Last night in the debate, the Senator from North Carolina mentioned the Volunteer Protection Act of 1997 already takes care of the health care providers. In fact, it does not. It defines a volunteer as “an individual performing services for a nonprofit organization or governmental entity who does not receive compensation or any other thing of value in lieu of compensation.”

I was speaking to one of my neighbors. He is a general surgeon. He was just in an emergency room last week. He has health insurance, could not afford to pay, and he voluntarily saw this patient. I do not think it would be right for people to volunteer and then be sued.

My amendment says if, out of the goodness of your heart, you work at a clinic, such as Dr. Chandler, a friend of mine who is a cardiologist in Las Vegas—he takes care of the poor on the weekends, and yet he has to carry malpractice insurance.

Many doctors and health care providers who volunteer their services for the poor should be encouraged, not discouraged, to give their services.

I urge the adoption of this amendment. It is the right thing to do just as the Good Samaritan Act and the Volunteer Protection Act of 1997 were the right things to do.

The PRESIDING OFFICER. Time has expired. Who yields time in opposition? The Senator from North Carolina.

Mr. EDWARDS. Madam President, Senator Coverdell offered legislation in 1997, as the Senator referred to, called the Volunteer Protection Act that does what this amendment is aimed at. It provides specific protection for people who provide volunteer services. Physicians are included in that legislation.

Further, there is a specific provision in that legislation which provides that State laws can remain intact. Any bill changes are given wide latitude to opt out and enact their own legislation on this issue. There is no such provision in this amendment.

Legislation, offered by Senator Coverdell and passed in 1997, covers this issue. If the Senator wants to attempt to amend that legislation, that would be the appropriate vehicle, not this vehicle. This legislation we are debating today is the Bipartisan Patient Protection Act. It is about HMO accountability and HMO reform. These issues that are not directly related to HMO reform and HMO accountability do not belong on this legislation. For that reason, we oppose this particular amendment.

I yield the floor. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. EDWARDS. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.
The question is on agreeing to the motion. The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 46, as follows:

[Rollcall Vote No. 212 Leg.]

YEAS—52

Akaka  Durbin  McCain
Baucus  Edwards  Mikulski
Bayh  Feingold  Miller
Biden  Feinstein  Murray
 Bingaman  Graham  Nelson (FL)
Boxer  Harkin  Nelson (NE)
Breaux  Hollings  Reid
Cantwell  Inouye  Reid
Carnahan  Jeffords  Reid
Carper  Johnson  Rockefeller
Gingrich  Kennedy  Sarbanes
Clinton  Kerry  Schumer
Conrad  Kohl  Stabenow
Corzine  Lautenberg  Stabenow
Daschle  Leahy  Torricelli
Dayton  Levin  Weisensee
Dodd  Lieberman  Wyden
Dorgan  Lincoln

NAYS—46

Allard  East  Nickles
Allen  Fitzgerald  Roberts
Bennet  Frist  Santorum
Bond  Gramm  Sessions
Brownback  Grassley  Smith (NC)
Bunning  Gregg  Smith (OK)
Burns  Hagel  Snow
Byrd  Hatch  Specter
Campbell  Helms  Stevens
Chafee  Hatchwell  Thomas
Coehn  Harkin  Thomas
Collins  Inhofe  Thompson
Cochran  Judges  Voinovich
Craig  Kyl
Crapo  Logan  Voinovich
DeWine  Lucas  Warner
Ensign  McConnell

NOT VOTING—2

Domenici  Markowski

The motion was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as a point of information, we have the Thompson amendment. It is agreed by the managers we would have a minute on either side and then go to a rollcall vote. We ask our Members to remain in the Chamber, if they would. We are prepared.

Mr. GREGG. Madam President, if the Senator will yield, I would like to also note after the Thompson amendment it is expected the order of amendments will be Senator Smith of Oregon for 30 minutes, Senator Nickles for 40 minutes, and Senator Allard for 30 minutes. We will enter into a unanimous consent agreement after the vote, hopefully, to get that order worked out.

The PRESIDING OFFICER. Who yields time?

AMENDMENT NO. 819, AS MODIFIED

Mr. THOMPSON. I call up amendment No. 819 and I send a modification to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 819), as modified, is as follows:

On page 156, strike line 17 and all that follows through page 157, line 8, and insert the following:

(9) REQUIREMENT OF EXHAUSTION.—

(A) IN GENERAL.—A cause of action may not be brought under paragraph (1) in connection with any denial of a claim for benefits of any individual until all administrative processes, under sections 102 and 103 of the Bipartisan Patient Protection Act of 2001 (if applicable) have been exhausted.

(B) EXCEPTION FOR NEEDED CARE.—A participant or beneficiary may seek relief exclusively in Federal court under subsection 502(a)(1)(B) prior to the exhaustion of administrative remedies under sections 102, 103, or 104 of the Bipartisan Patient Protection Act (as required under subparagraph (A)) if it is demonstrated to the court that the exhaustion of such remedies would cause irreparable harm to the participant or beneficiary. Notwithstanding the awarding of relief under subsection 502(a)(1)(B) pursuant to this subparagraph, no relief shall be available as a result of, or arising under, paragraph (1)(A) unless the requirements of subparagraph (A) are met.

(C) EXCEPTION FOR NEEDED CARE.—A participant or beneficiary may seek relief exclusively in Federal court under subsection 502(a)(1)(B) prior to the exhaustion of administrative remedies under sections 102, 103, or 104 of the Bipartisan Patient Protection Act of 2001 regarding an injury for which such request was made. Notwithstanding the awarding of relief under subsection 502(a)(1)(B) pursuant to this subparagraph, no relief shall be available as a result of, or arising under, paragraph (1)(A) unless the requirements of subparagraph (A) are met.

(D) FAILURE TO REVIEW.—

(i) IN GENERAL.—If the external review entity fails to make a determination within the time required under section 109(e)(1)(A)(i), a participant or beneficiary may bring an action under section 514(d) after 10 additional days after the date on which such time period has expired and the filing of such action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 109(e)(1)(A)(ii).

(ii) EXPEDITED DETERMINATION.—If the external review entity fails to make a determination within the time required under section 109(e)(1)(A)(ii), a participant or beneficiary may bring an action under section 514(d) after 10 additional days after the date on which such time period has expired and the filing of such action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 109(e)(1)(A)(ii).

(E) RENT OF BENEFFETS DURING APPEALS PROCESS.—Receipt by the participant or beneficiary of the benefits involved in the claim for benefits under any of the subparagraphs (A) or of any action commenced under this subparagraph—

(i) shall not preclude continuation of all such administrative processes to their conclusion if so moved by any party, and

(ii) shall not preclude any liability under subsection (a)(1)(C) and this subsection in connection with such claim.

The court in any action commenced under this subsection shall take into account any receipt of benefits during such administrative processes or any action in determining the amount of the damages awarded.

(F) ADMISSIBLE.—Any determination made by a reviewer in an administrative proceeding under section 104 of the Bipartisan Patient Protection Act of 2001 shall be admissible in any Federal court proceeding and shall be presented to the trier of fact.

On page 165, strike all that follows through page 168, line 3, and insert the following:

(4) REQUIREMENT OF EXHAUSTION.—

(A) IN GENERAL.—As provided in subparagraph (D), a cause of action may not be brought under paragraph (1) in connection with any denial of a claim for benefits of any individual until all administrative processes under sections 102, 103, and 104 of the Bipartisan Patient Protection Act of 2001 (if applicable) have been exhausted.

(B) LATE MANIFESTATION OF INJURY.—

(i) IN GENERAL.—A participant or beneficiary shall not be precluded from pursuing a claim under sections 102, 103, and 104 of the Bipartisan Patient Protection Act regarding an injury that such participant or beneficiary has experienced if the external review entity first determines that the injury of such participant or beneficiary is a late manifestation of an earlier injury.

(ii) DEFINITION.—In this subparagraph, the term ‘late manifestation of an earlier injury’ means an injury sustained by the participant or beneficiary which was not known, and should not have been known, to such participant or beneficiary by the latest date that the requirements of subparagraph (A) should have been met regarding the claim for benefits which was denied.

(C) EXCEPTION FOR NEEDED CARE.—A participant or beneficiary may seek relief exclusively in Federal court under subsection 502(a)(1)(B) prior to the exhaustion of administrative remedies under sections 102, 103, or 104 of the Bipartisan Patient Protection Act (as required under subparagraph (A)) if it is demonstrated to the court that the exhaustion of such remedies would cause irreparable harm to the participant or beneficiary. Notwithstanding the awarding of relief under subsection 502(a)(1)(B) pursuant to this subparagraph, no relief shall be available as a result of, or arising under, paragraph (1)(A) unless the requirements of subparagraph (A) are met.

(D) FAILURE TO REVIEW.—

(i) IN GENERAL.—If the external review entity fails to make a determination within the time required under section 109(e)(1)(A)(i), a participant or beneficiary may bring an action under section 514(d) after 10 additional days after the date on which such time period has expired and the filing of such action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 109(e)(1)(A)(ii).

(ii) EXPEDITED DETERMINATION.—If the external review entity fails to make a determination within the time required under section 109(e)(1)(A)(ii), a participant or beneficiary may bring an action under section 514(d) after 10 additional days after the date on which such time period has expired and the filing of such action shall not affect the duty of the independent medical reviewer (or reviewers) to make a determination pursuant to section 109(e)(1)(A)(ii).

(E) RECEIPT OF BENEFITS DURING APPEALS PROCESS.—Receipt by the participant or beneficiary of the benefits involved in the claim for benefits under any of the subparagraphs (A), or of any action commenced under this subparagraph—

(i) shall not preclude continuation of all such administrative processes to their conclusion if so moved by any party, and

(ii) shall not preclude any liability under subsection (a)(1)(C) and this subsection in connection with such claim.

The court in any action commenced under this subsection shall take into account any receipt of benefits during such administrative processes or any action in determining the amount of the damages awarded.

(F) ADMISSIBLE.—Any determination made by a reviewer in an administrative proceeding under section 104 of the Bipartisan Patient Protection Act of 2001 shall be admissible in any Federal court proceeding and shall be presented to the trier of fact.

Mr. KENNEDY. Can we have order, Mr. President? We have had great cooperation of the Members. We have made good progress during the morning. We thank Senator Gregg for outlining the series of amendments and
May we have order in the Chamber, please.

Mr. EDWARDS. I thank the Senator from Tennessee. This is another example of what can be done when we tackle these problems together and try to find solutions. As the issue of scope and employer liability, with a number of Senators on both sides of the aisle, now we are doing it on the issue of exhaustion of administrative remedies, exhaustion of appeals.

This amendment meets the very principle by which we believe in this legislative drafting, which is what we want patients to get the care they need. The most effective way to do that is to have an effective appeals process.

What we have done in this process is, No. 1, require that the patient, the claimant, go through the appeal before going to court, exhausting those appeals. That is the easiest way and the most efficient way to get them the care they need.

The second thing we do is provide an outlet in case the appeals process drags on and it does not operate the way it should. If it is longer than 31 days, then the patient will be able to go to court. But, as the Senator from Tennessee points out, they will have to simultaneously exhaust the administrative appeal.

Third, we have now provided specifically that the result of the administrative appeal will be admissible in any court proceeding, which is another important element of this amendment. I thank my friend from Tennessee. I thank him for working with us on this issue. I think we have an issue about which we now have consensus and we are pleased to be there.

I yield the remainder of my time.

Mr. NICKLES. Were the yeas and nays ordered on the amendment or the modification?

Mr. NICKLES. The PRESIDING OFFICER. The amendment (No. 819), as modified, was agreed to.

Mr. KENNEDY. Mr. President, how long did that vote take?

The PRESIDING OFFICER. Fifteen and a half minutes.

Mr. KENNEDY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from Tennessee and the Senator from North Carolina. The last amendment was an important amendment. It was a major step forward. That amendment, along with the Snowe amendment and several others that have passed, has immeasurably helped this legislation.

I thank the Senator from Tennessee and the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I join with the comments of the Senator from Arizona. In the trades, that was "a biggie." It was a very positive action to make sure that the exhaustion of the appeals process is a true exhaustion of the appeals process and we don't go straight to the court system. I congratulate the Senators from North Carolina and Tennessee for achieving that resolution.

Mr. HATCH. Mr. President, I rise to oppose amendment No. 847 offered by my friend from Kansas, Senator BROWNBACK.

This amendment purports to establish safeguards with respect to medical treatments that are not accommodated or approved by Medicare. The amendment would impose criminal sanctions, including imprisonment of up to 10...
years, on those who violate the restrictions on modifying the human genetic structure.

Not only is this the wrong time to consider this amendment, it is also the wrong piece of legislation on which to consider this amendment. In all candor, I have read this legislation. As I've told my colleagues, in my view, based on my preliminary reading of this amendment, I greatly doubt there will ever be a right time for this proposal. I have no doubt that this amendment is well intentioned. I have worked with Senator BROWNBACK many times in the past on many issues, including many important right-to-life issues, such as outlawing partial birth abortion. Both he and I are proud to call ourselves pro-life Senators.

But, as my colleagues are aware, Senator BROWNBACK and I happen to disagree on the issue of federal funding for embryonic stem cell research. I understand and completely respect his views on this issue.

In a nutshell, the Brownback amendment attempts to regulate genetic research. But I am afraid that it might regulate this critical avenue of research in existence.

This is an exceedingly complex and dynamic field of science. It is certainly not the type of legislation that we want to attach as a non-germane amendment to a bill that does not directly relate to biomedical research.

My goodness, we have our hands full enough with HMOs and the Patients' Bill of Rights. We do not need to further complicate an already complex bill with this language.

Why do we need to take floor time on this proposal? Have there been hearings on this language? Has there been a committee mark-up on this bill?

Isn't the reason why we have committed hearings and committee mark-ups so that complex issues can be adequately aired by members of the critical committees before the full Senate debates an issue?

There is much virtue for letting legislation ripen and be scrutinized in committee before the entire body debates the merits of proposals such as this amendment.

I think we should defeat this amendment today so that the relevant committees can thoroughly review this legislation. While I strongly believe that we should defeat this amendment on strictly procedural grounds, I do want to make a few comments on some initial problems that I have with respect to the substance of the bill.

First, because there are over 300 diseases thought to be caused by a defect in a single gene, we must be extremely careful that we do not cut off or unduly impede vital research on such diseases. As a co-sponsor of the Orphan Drug Act of 1984, I know very well how millions of American families must struggle each day with small population but highly debilitating diseases such as multiple sclerosis, ALS, and Fragile X Syndrome.

The problem with the Brownback amendment is that it appears to thwart research on gene therapies that may lead one day to cures for many of these single-gene diseases. It would not be right for the Senate to hastily adopt language that derails research on such crippling diseases as Alzheimer's or Parkinson's.

I am concerned with what the definition of human germline gene modification in section 301 of the Brownback bill could do when it is read in context of section 302 of his legislation. The amendment's definition of human germline modification is ambiguous.

As one attorney representing the biotechnology industry has characterized the reach of this definition:

Among other problems, which of the examples listed are "sources" of "forms" of DNA and why does it matter? Moreover, the sentence—and he is referring to the first definition in section 301 which describes human germline modification—ends by referring to "including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA." To what part of the first sentence defining "human germline modification" is the language referring? Does the last sentence of the definition, "Nor does it include the change of DNA involved in the normal process of sexual reproduction" prohibit in vitro fertilization? Does any part of the amendment prohibit or allow in vitro fertilization? What genetic technologies does "normal" cover, if any?

Without objection, I would like to place in the RECORD a copy of this legal memorandum prepared by Edward Korweck of the law firm of Hogan & Hartson. As I understand it, this memorandum was written on behalf of BIO, the biotechnology industry association.

I also ask unanimous consent to place in the RECORD a copy of a letter from BIO to Senator LOTT opposing the Brownback amendment. This letter voices its opposition to the amendment by stating:

"Let's not cripple essential medical research for a host of chronic and fatal diseases such as diabetes, Parkinson's disease, Alzheimer's disease, and various cancers. The patients and families who suffer from these diseases are looking to advances in medical research to develop cures and better treatments for them.

This argument must be considered by all members of the Senate. The question in vitro fertilization relates to the normal process of sexual reproduction is a question of great importance because it appears to directly incite the science of embryonic stem cell research.

Specifically, we need to know this language would treat research with human pluripotent stem cells. We all know where Senator BROWNBACK stands on that issue. While I generally agree with my friend from Kansas, I disagree with him on embryonic stem cell research.

This is an issue that deserves careful consideration by each Senate. I welcome this debate. But today is not the time. We simply need to know all the implications of the Brownback language before we even consider such legislation.

In my view, this Senate should go on record as opposing federal funding for embryonic stem cell research. And we certainly do not want to turn back the clock on the type of gene therapy research that has been conducted for over 20 years.

This is simply not the kind of measure that you try to slip into an unrelated bill.

All interested parties—patient groups, religious and advocacy organizations, scientists, health care providers, biotechnology firms—deserve to be fully consulted on how the language of this measure will affect their interests.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:


Hon. TRENT LOTT,
U.S. Senate,
Washington, DC.

DEAR SENATOR LOTT: On behalf of the Biotechnology Industry Organization (BIO), I am writing to express BIO's opposition to an amendment that may be offered by Senator Brownback regarding germ line gene modification. This amendment may come up for a vote on the Senate floor as early as today during consideration of S. 1052—the McCain, Kennedy, Edwards Bipartisan Patient Protection Act. I urge you to vote against the Brownback amendment if it comes up for a vote.

BIO opposes germ line gene modification and we support the moratorium on germ line gene modification that has been in place for over a decade. This moratorium has allowed critical genomic research to continue while prohibiting unsafe and unethical work. To our knowledge, all scientists have complied with this moratorium.

Unfortunately, the Brownback amendment reaches far beyond germ line gene modification. It attempts to regulate genetic research—a complex and dynamic field of science—that holds great potential for patients with serious and often life-threatening illnesses. This proposal also could prohibit research on human pluripotent stem cells. Since these cells have been demonstrated to form any cell in the body they hold enormous therapeutic potential.

Let's not cripple essential medical research for a host of chronic and fatal diseases such as diabetes, Parkinson's disease, Alzheimer's disease, and various cancers. The patients and families who suffer from these diseases are looking to advances in medical research to develop cures and better treatments for them.

Furthermore, to our knowledge there has been no consultation with the scientific community, researchers, physicians, or patient groups prior to the filing of the Brownback amendment. This is troubling because the amendment calls for severe sanctions, including imprisonment of scientists, including imprisonment of biotech researchers.

I urge you to vote against this amendment. If you have questions, please call me at 202-857-0244. Thank you for your consideration on this important matter.

Sincerely,

W. LEE RAWLS,
Vice President, Government Relations.
Memorandum  
June 29, 2001  
To: Michael Werner, Esquire, BIO Bioethics Counsel  
From: Edward L. Koeck, Ph.D., J.D.  
Re: Senate Initial Comments: Analysis of the Brownback Amendment

The Brownback Amendment is poorly worded and confused as to its precise coverage. The use of scientific terms and other complex language both to prohibit and allow certain gene modification activities is pervasive. Many of the sentences are composed of language that is incorrect or ambiguous from a scientific standpoint. A determination needs to be made of what each sentence of the Amendment is intended to accomplish. As to the important definitions, the term “somatic cell” is defined in proposed section 301(3) of Chapter 16, as “a diploid cell (having two sets of the chromosomes of almost all body cells) obtained or derived from a living or deceased human body at any stage of development.” What does “of almost all body cells” mean? Is this an oblique reference to the haploid nature of human sex cells, i.e., sperm and eggs? Also, why is it important to describe in such confusing detail from where the cells are derived (in context) or specifying, for example, a somatic cell is a human diploid cell? From a scientific standpoint, the definition of a somatic cell is dependent on whether the cell is from living or dead human beings. More importantly, as to this human source issue, when does a “human body” exist such that its status is “living” or “dead” or its “stages of development” become relevant criteria for determining what is a “somatic cell.”

Similarly the definition of “human germline modification,” especially the first sentence, is very convoluted. The first sentence is very confusing. The first sentence states:

“The term ‘human germline gene modification’ means the intentional modification of DNA of any human cell (including human eggs, sperm, fertilized eggs (i.e., embryos), or any early cells that will differentiate into gametes or can be manipulated to do so) for the purpose of producing a genetic change which can be passed on to future individuals, including any source, any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.”

Among other problems which of the examples listed or “form” or “forms” of DNA and why does it matter? Moreover, the sentence ends by referring to “including DNA from any source, and in any form, such as nuclei, chromosomes, nuclear, mitochondrial, and synthetic DNA.” To what part of the first sentence defining “human germline modification” is this language referring? Does the first sentence of the definition, “Nor does it include the change of DNA involved in the normal process of sexual reproduction” prohibit in vitro fertilization? Does any other part of the Amendment prohibit or allow in vitro fertilization? What genetic technologies does “normal” cover, if any?

Similarly, the second sentence in the definition, stating what is not covered by the definition of “human germline modification,” contains three “not” words, leaving the reader to decipher what exactly is “not” covered by the definition of “human germline modification”: “The term does not include any modification of cells that are not a part of and will not be used to construct either a ‘zygote,’ ‘embryo’ (emphasis added). Also, what is an ‘embryo’ for purposes of this Amendment and what does ‘part of’ mean? Are (fertilized) sex cells “part of” an embryo?

These and other problems leave the bill unsupportable in its current form. Due to this imprecision, the amendment’s impact is unclear and seemingly far reaching.

Mr. ENSIGN. Mr. President, this pro bono amendment will benefit doctors across the nation. An example is my neighbor, Dr. Dan McBride. Dr. McBride has provided medical care to individuals and families free-of-charge for years. He understands that not all Nevadans can afford health care insurance, or even not even afford to go to the doctor once each year; but that does not mean that they are not deserving of proper health care. This amendment will ensure that doctors such as Dan McBride can continue providing free health care to the less fortunate without fear of lawsuits.

Mr. KENNEDY. Mr. President, today we are at the threshold of astonishing new progress in medicine. New discoveries mean that it is not too late to intervene. This medical revolution will revolutionize the diagnosis and treatment of countless disorders. This astonishing potential to relieve suffering will be squandered if patients fear that their private genetic information is property, to be passed on to their insurance companies and their employers, where it can be used to deny people health care and deny workers their jobs.

To protect all Americans against genetic discrimination in health insurance and employment, I am proud to support the important legislation that Senator DASCHLE has introduced on this issue. I commend my colleague, Senator DASCHLE, for his basic effort to put this issue to the floor of the Senate, and I look forward to working closely with him in the days to come.

However, Senator ENSIGN’s amendment has several shortcomings that make any protection meaningless. We must realize that genetic information in all its forms. Unfortunately, the definitions of genetic information contained in the ENSIGN amendment do not properly protect genetic information in all its forms. Unfortunately, the definitions of genetic information contained in the ENSIGN amendment do not properly protect genetic information in all its forms. Unfortunately, the definitions of genetic information contained in the ENSIGN amendment do not properly protect genetic information in all its forms. Unfortunately, the definitions of genetic information contained in the ENSIGN amendment do not properly protect genetic information in all its forms. Unfortunately, the definitions of genetic information contained in the ENSIGN amendment do not properly protect genetic information in all its forms. Unfortunately, the definitions of genetic information contained in the ENSIGN amendment do not properly protect genetic information in all its forms.

Finally, the ENSIGN amendment does not create a private right action—leaving individuals without an adequate remedy. Clearly, providing protections without a private right action makes any protection meaningless.

We’ve seen a revolution in our understanding of genetics—scientists have finished mapping our genetic code, and
researchers are developing extraordinary new tests to determine if a person is at risk of developing a particular disease. But with increased understanding of the possibilities of the genome uncovers, comes increased responsibilities. It simply cannot take one step forward in science while taking two steps back in civil rights. The HELP committee will move forward with consideration of this issue this summer. We welcome the opportunity to work with Senator Ensign and other Republicans on a comprehensive genetic non-discrimination bill that can command bipartisan support. It is our hope that we can bring up and pass a bill later this summer.

Mr. GREGG. I now propose a unanimous consent request relative to the following amendments to which we will be proceeding. The first would be Senator SMITH for 30 minutes equally divided. The second would be Senator ALLARD, 30 minutes equally divided. The amendment would be Senator NICKLES, 30 minutes equally divided. The fourth would be Senator SANTORUM, 40 minutes equally divided. And the fifth would be Senator CRAIG, 30 minutes equally divided.

The first of the amendments or the purposes of the amendments have been presented to the other side. I can run through those if Members wish to hear them.

The PRESIDING OFFICER. Is there objection?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the Senator has shared the substance. Members will hear the explanations, but the Smith amendment deals with tax credits; the Allard amendment, with exclusions for smaller businesses in terms of the numbers of employees; the Nickles amendment is an expansion to other Federal health programs; Santorum deals with punitive damages; and the Craig amendment deals with medical malpractice. We are familiar with the subject matter. We have no objection to that as an order, and we believe the time recommended will help us move this process along and will be sufficient to evaluate the amendments.

Mr. REID. Mr. President, we want to just make sure that the vote is in relation to the amendments offered in the usual form with no second-degree amendments in order prior to the vote.

Mr. GREGG. That is acceptable.

Mr. REID. And also that the time limit be as outlined and the time for debate—there would be an opportunity to file a motion prior to the vote in relation to the amendment.

Mr. GREGG. Do you mean a motion to table?

Mr. REID. Yes.

The PRESIDING OFFICER. The Senator so amends his request?

Mr. GREGG. Yes.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Mr. President, I inquire of the Senator from Nevada whether or not it would be possible to stack these votes or whether the jury is still out on that?

Mr. REID. We should wait on that. We have a number of people on this side who want to vote after every amendment. We will work on that.

Mr. GREGG. Mr. President, I ask unanimous consent that further reading of the motion be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Oregon is recognized.

MOTION TO COMMIT

Mr. SMITH of Oregon. Mr. President, I send a motion to the desk.

The PRESIDING OFFICER. The clerk will record the motion as follows:

The Senator from Oregon [Mr. Smith] moves to commit the bill, S. 1052, as amended, to the Committee on Finance with instructions to report H.R. 3 back to the Senate forthwith with an amendment.

Mr. SMITH of Oregon. Mr. President, I ask unanimous consent that further reading of the motion be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The motion is as follows:

Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report H.R. 3 back to the Senate forthwith with an amendment that—

(1) strikes all after the enacting clause and inserts the text of S. 1052, as amended;

(2) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in S. 41;

(3) provides that H.R. 3, as amended pursuant to paragraphs (1) and (2), does not negatively impact the social security trust funds or result in an on-budget surplus that is less than the medicare surplus account, and

(4) provides that H.R. 3, as so amended, is not subject to a budget point of order.

Mr. SMITH of Oregon. Mr. President, for myself, Senator HATCH, Senator ALLEN, and others, I request to send to the desk a motion to commit S. 1052 to the Finance Committee with instructions to make permanent the research and development tax credit. We are joined in this also by Senators CRAPO, CRAIG, BENNETT, BROWNBACK, BURNS, HUTCHINSON, ALLEN, and Enzi.

As a Member of the Senate high-tech task force, I believe that the R&D tax credit is essential to the technology community, and also to the pharmaceutical community.

This credit encourages investment in basic research that, over the long term, can lead to the development of new, cheaper, and better technology products and services. The research and development is certainly essential for long-term economic growth.

Innovations in science and technology have fueled the massive economic expansion we have witnessed over the course of the 20th century. These achievements have improved the standard of living for nearly every American. Simply put, the research tax credit is an investment in economic new jobs, and in important new products and processes that we need in our lives.

The R&D tax credit must be made permanent. This credit, which was originally enacted in 1981, has only been temporarily extended 10 times. Permanent extension is long overdue.

Because this vital credit isn’t permanent, it offers businesses less value than it otherwise would if they knew the tax credit would be available in future years. This uncertainty undermines the entire purpose of the credit.

Investment in R&D is important because it spurs innovation and economic growth. Information technology, for example, was responsible for more than one-third of the real economic growth in 1995 through 1998.

Information technology industries account for more than $500 billion of the annual U.S. economy, widely seen as a cornerstone of technological innovations which, in turn, serves as a primary engine of long-term economic growth.

The tax credit will drive wages higher. Findings from a study, for example, conducted by Cooper’s & Lybrand show that workers in every State will benefit from higher wages if the research credit is made permanent.

Payroll increases as a result of gains in productivity stemming from the credit have been estimated to exceed $60 billion over the next 12 years.

Furthermore, greater productivity from additional research and development will increase overall economic growth in every state in the Union. Research and development is essential for long-term economic growth.

The tax credit is cost-effective. The R&D tax credit appears to be a cost-effective policy instrument for increasing business R&D investment. Some recent studies suggest that one dollar of...
the credit’s revenue cost leads to a one dollar increase in business R&D spending.

There is broad support among Republicans for the credit, and President Bush included the credit in the $1.6 trillion tax relief plan. I urge my colleagues to support this amendment, and I thank Senator HATCH and Senator ALLEN, the chief cosponsors, for providing us with the opportunity of increasing the size of the tax cut to include this important priority but which, unfortunately, was left out of the tax bill that we recently passed.

Before I yield to Senator ALLEN for his comments, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?
The yeas and nays were ordered.

Mr. SMITH. I yield the remainder of my time to Senator ALLEN.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. ALLEN. Mr. President, I rise in support of the amendment and very much thank Senator GORDON SMITH of Oregon for his leadership and for giving us the opportunity to vote on this very important amendment and principle and tax policy that is essential for the United States to compete and succeed in the future. I also commend the Senator from Utah, Mr. ORRIN HATCH, for all his work over the years, and especially this year, in advocating this measure.

As chairman of the high-tech task force on the Republican side of the Senate, we have endorsed this idea. We have been working on this idea. Unfortunately, as the Senator said, it was not included in the tax bill. But the reason that this is so important is that research and technology—generally speaking, research in biotechnology and genetics—is at stake with this amendment and this research and development tax credit.

Up here in Washington, we are making decisions for a year or so, or even a 5-year budget, and even once in a while we do projections over 10 years. In private industry and business, their planning needs to be long-term. In particular, when you think of research and development into pharmaceuticals, the amount of research that goes into putting a drug before getting it to patent, to the market, and so forth, it is not just the research and the labs; there are clinical trials that go on year after year, and hopefully you will get a patent; and for a short period of time you will have a window of opportunity on that prescription drug, for example. So this tax policy is very important so that businesses have certainty, that there is credibility, stability, predictability to devote the millions and, indeed, in some cases, billions of dollars to research and development and technology.

The issue is jobs and competition for the people of the United States. We, as Americans, need to lead in technological advances. The R&D tax credit is very important in microchips or semiconductor chips. It is important in communications research and development. It is important in life sciences and medical sciences and, obviously, in research that impacts biotechnology and pharmaceuticals.

Making the R&D tax credit permanent, as Senator SMITH says, actually is cost effective. It makes a great deal of sense. Studies suggest every dollar of revenue this leads to a $1 increase in business R&D spending. These are good jobs and it also allows us as a country to compete.

A permanent extension is long overdue. As Senator SMITH said, it has been extended every now and then for a few years. Once in a while it lapses. Businesses cannot plan that way. They have to make sure it stays constant. Publicly traded companies have their quarterly reports, their shareholder reports, and the amount of investment they get in their companies based on how they are operating and managing that company.

If you have changing tax laws or lack of credible, predictable tax policies that foul up the system, that makes them less likely to want to invest and take the risk of billions of dollars in research and development if they are not certain of the long term.

This amendment to make the research and development tax credit permanent will spur more American investment; it will create more American jobs—and they are good paying jobs—and that will lead us to better products, better devices, better systems, and better medicines.

I hope the Senate will work in a unified fashion on this amendment by Senator SMITH to make permanent the research and development tax credit so Americans get those good jobs, but, more importantly, so America can compete and succeed and make sure America is in the lead on technological advances, whether they are in communications, in education, in manufacturing, or the medical or life sciences.

I again thank the Senator from Oregon, Mr. SMITH, for his great leadership, as well as that of ORRIN HATCH.

I yield back the time I have at this moment and reserve whatever time may remain on our side.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is a Patients’ Bill of Rights bill. There will be tax legislation. When there is tax legislation before this body, that is the time we can appropriately consider permanently extending the R&D tax credit.

I wish my good friend would withdraw his amendment because this is not the proper time and place for it. If he does not wish to withdraw it, I urge my colleagues to not support it because it does not fit here. Were it to pass, the door would be open and we would be writing another tax bill. We have already passed a big tax bill. We passed a tax bill of 1.35 trillion bucks. That is a big tax bill. This is not the time and place.

Mr. REID. Will the Senator yield for a question?

Mr. BAUCUS. I yield to my good friend from Nevada.

Mr. REID. Mr. President, as chairman of the Finance Committee, the Senator from Montana made commitments to a number of people, including this Senator, that he is going to do everything in his power as chairman of the Finance Committee to make sure there are other tax vehicles this year; is that true?

Mr. BAUCUS. That is absolutely true. There are many Senators who wanted to offer tax provisions to this bill but deferred, recognizing this is not the time and place. It is essential the R&D tax credit has enormous support in this body.

Does anybody here think there is not going to be another tax bill? Of course, nobody here believes there will not be another tax bill. There will be tax legislation this year. That is clear. The appropriate time for this Senate to appropriately include considering permanent extension of the R&D tax credit is when the tax legislation comes up.

The current provision expires December 31, 2001, not December 31, 2003; it expires December 31, 2004, over 3 years away. In all the years we have been extending the R&D tax credit, that is probably the longest extension that has existed. It has been with my good friend; it should be permanent. This yo-yo, up-and-down, back-and-forth, on-again off-again application of the R&D tax credit by this body does not make good sense.

It is wrong.

Mr. BAUCUS. That is absolutely true. This is not a tax bill; this is a Patients’ Bill of Rights bill. There will be tax legislation. When there is tax legislation before this body, that is the time we can appropriately consider permanently extending the R&D tax credit.

I wish my good friend would withdraw his amendment because this is not the proper time and place for it. If he does not wish to withdraw it, I urge my colleagues to not support it because it does not fit here. Were it to pass, the door would be open and we would be writing another tax bill. We have already passed a big tax bill. We passed a tax bill of 1.35 trillion bucks. That is a big tax bill. This is not the time and place.

Mr. REID. The Senator from Montana made commitments to a number of people, including this Senator, that he is going to do everything in his power as chairman of the Finance Committee to make sure there are other tax vehicles this year; is that true?
Mrs. BOXER. Will my colleague yield to me for a question?  
Mr. BAUCUS. I ask how much time is remaining on both sides?  

The PRESIDING OFFICER. Eleven minutes to the opponents; 4 1/2 minutes to the Senator from Oregon.  

Mr. BAUCUS. I yield to my good friend from California.  

Mrs. BOXER. I want to ask the distinguished chairman of the Finance Committee this question. As someone who come from the largest State in the Union, on the cutting edge of high tech, making the R&D—or R&E sometimes called—tax credit permanent has been a priority of mine for a long time. Will my friend tell me, if this is such an important priority to those who, in fact, had the majority at the time the tax bill was written, namely, the Republicans, and the President certainly was working at that time with Senator GRASSLEY, could they not have put the extension of the R&D tax credit into the budget bill that was brought to this Chamber?  

Mr. BAUCUS. Mr. President, the Senator from California makes a very good point. Clearly, the President could have included a permanent extension of the R&D tax credit in his proposed tax legislation. The Senate was then controlled by the Republican Party, and it certainly could have put in the R&D tax credit, and it probably would have survived conference if they pushed it. I say to my friend from California, this is only speculation, but that was not provided for because the current extension, the current provision is in place at least until December 31, 2004. So there is time for the R&D tax credit to take effect, and at a later date we can make it permanent.  

Mrs. BOXER. I say to my friend, then, that is the same comment we can make to our colleagues who are trying to put this on a Patients’ Bill of Rights. The R&D tax credit is the effect until 2004. Let’s get an appropriate vehicle where we can walk together and support the R&D tax credit and not put it on the Patients’ Bill of Rights.  

I thank my friend for yielding.  

The PRESIDING OFFICER. The Senator from Oregon.  

Mr. SMITH of Oregon. Mr. President, I say to my friend from Montana, I want to put this on whatever moves. I know it does not expire until 2004. I also say Bush did not have this in his original tax bill, but that was moved down then. It was unfortunate it was moved down. I want to see us do it as quickly as we can for the simple reason that businesses need to make planning and expenditures that last an awful long time. The year 2004 does not fit with some of those plans that need to be made.  

This is not unrelated to medicine and patients’ health. Part of the technological development that we are hoping to continue to provide to our people is in the pharmaceutical and biotechnological areas which do have a direct bearing on patients’ health. The best right a patient can have is good health. This will facilitate that a great deal, perhaps as much as anything else in the bill.  

I ask unanimous consent to amend a modification to the amendment to be offered by Mr. BAUCUS. Reserving the right to object, could the Senator share with the Senate the contents of the modification; otherwise, I will be constrained to object.  

Mr. SMITH of Oregon. It is simply to comply with the Parliamentarian’s request to be consistent with Senate requirements.  

Mr. BAUCUS. I do not object.  

The PRESIDING OFFICER. Without objection, it is so ordered.  

The motion, as modified, is as follows:  

Mr. SMITH of Oregon moves to commit the bill S. 1052, as amended, to the Committee on Finance with instructions to report S. 1052 back to the Senate within 14 days with an amendment that—  

(1) makes the research and development tax credit permanent and increases the rates of the alternative incremental research and development tax credit as provided in S. 41.  

(2) provides that S. 1052, as amended pursuant to paragraph (1), does not negatively impact the social security trust funds or result in an on-budget surplus that is less than the medicare surplus account, and  

(3) provides that S. 1052, as so amended, is not subject to a budget point of order.  

Mr. REID. Has everyone yielded back their time?  

Mr. SMITH of Oregon. I yield minute to the Senator from Virginia.  

The PRESIDING OFFICER. The Senator from Virginia.  

Mr. ALLEN. To wrap up in response to some of the assertions and comments made in opposition to this amendment, the reason this amendment is necessary is, unfortunately, the other side of the aisle knocked out the amount of the tax cut we wanted and omitted small family farms from the research and development tax credit. Senator HATCH was working mightily, with the support of many Members, to try to get this into the tax cut bill.  

More important than all the procedure is the fact that our economy is going very slowly. I am trying to be positive at this moment. The technology sector is obviously going very slowly. In fact, it is in some regards frozen, especially in new investment. The research and development tax credit being permanent now matters because now and in the next few quarters is when technology companies, pharmaceuticals, biotechs, all folks in tech, will be making decisions, and those decisions need to be made so they can make the jobs, get our economy going again, and improve our lives.  

I thank the Senator from Oregon for this amendment and hope my colleagues will support this amendment.  

Mr. SMITH of Oregon. We yield back the remainder of our time.  

Mr. BAUCUS. I ask, is all time yielded back?  

The PRESIDING OFFICER. The Senator from Montana has 8 minutes 50 seconds.  

Mr. BAUCUS. Mr. President, I yield back my time and I make a constitutional point of order against Senator SMITH’s motion on the grounds that the amendment would affect a bill that is not a House-originated revenue bill.  

I ask for the yeas and nays.  

The PRESIDING OFFICER. Is there a sufficient second?  

There is a sufficient second.  

The yeas and nays were ordered.  

Mr. REID. I ask permission to enter a request for unanimous consent with the Senator from New Hampshire. I ask that the vote on the motion made by the Senator from Montana be set aside and we next go, as has been already ordered, to the Allard amendment, the Nickles amendment, we debate the Allard and the Nickles amendment, and vote on those three amendments at the conclusion of debate.  

Mr. GREGG. We have 2 minutes equally divided prior to the Allard amendment and Nickles amendment to explain.  

The PRESIDING OFFICER. Does the Senator so amend his request?  

Mr. REID. Yes.  

The PRESIDING OFFICER. Without objection, it is so ordered.  

The Senator from Colorado is recognized.  

AMENDMENT NO. 821  

Mr. ALLARD. Mr. President, I call up amendment No. 821.  

The PRESIDING OFFICER. The clerk will report.  

The legislative clerk read as follows:  

The Senator from Colorado (Mr. ALLARD), for himself, and Mr. GREGG, Mr. CRAIG, Mr. NICKLES, Mr. ALLEN, Mr. INHOFE, Mr. SMITH of New Hampshire, Mr. GRAMM, Ms. COLLINS, Mr. SESSIONS, Mr. ENZI, and Mr. CAMPBELL, proposes an amendment numbered 821.  

Mr. ALLARD. Mr. President, I ask unanimous consent of a reading of the amendment be dispensed with.  

The PRESIDING OFFICER. Without objection, it is so ordered.  

The amendment is as follows:  

(Purpose: To exempt small employers from sales of action under the Act)  

On page 148, between lines 23 and 24, insert the following:  

“(D) EXCLUSION OF SMALL EMPLOYERS.—  

“(1) IN GENERAL.—Notwithstanding any other provision of this paragraph, in addition to excluding certain physicians, other health care professionals, and certain hospitals from liability under paragraph (1), paragraph (1) does not create any liability on the part of a small employer (or on the part of an employee of such an employer acting within the scope of employment).”  

DEFINITION.—In clause (1), the term ‘small employer’ means an employer—  

“(A) that, during the calendar year preceding the calendar year for which a determination under this subparagraph is being made, employed an average of at least 2 but not more than 15 employees on business days; and  

“(B) maintaining the plan involved that is acting, serving, or functioning as a fiduciary, trustee or plan administrator, including—
On page 165, between lines 14 and 15, insert the following:

"(ii) that, during the calendar year preceding the calendar year for which a determination is made, employed an average of at least 2 but not more than 15 employees on business days; and"

"(ii) maintaining the plan involved that is acting, serving, or functioning as a fiduciary, trustee or plan administrator, including—"

"(aa) a small employer described in section 3(16)(B)(i) with respect to a plan maintained by a single employer; and"

"(aa) a small employer described in section 3(16)(B)(i) with respect to a plan maintained by a single employer; and"

"(ii) employers not in existence in preceding year."

"(III) predecessors.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer."

"(的家庭 or more employees engaged in an industry affecting commerce. This is the area where we have decided in this amendment to differentiate the very small employers from the other employers who would be covered by the Family and Medical Leave Act, which defines employer as any business that employs 100 or more employees. The Family and Medical Leave Act, which requires employers to grant leave to parents to care for a newborn or seriously ill child, exempts businesses with fewer than 50 employees. The Fair Labor Standards Act, which contains minimum wage standards, exempts certain employers from minimum wage standards, exempts certain employers from minimum gross income—they did not use the number of employees—of less than $500,000 as an indication of what a small employer might be as it applies to that statute.

The Walsh-Healey Public Contracts Act, which contains minimum wage and overtime for federally contracted employers, exempts employers that have Federal contracts for materials exceeding $10,000, which also is indicative of a small employer. The Age Discrimination and Employment Act of 1967 exempts employers of 19 or fewer workers.

These numerous employee protections are currently in place as Federal law. The Senate should extend similar protections to employees of small business. If we do not protect employees from frivolous lawsuits, more than a million some estimate up to 9 million employees will lose their health care insurance otherwise.

Yesterday, the Senate voted on the Kennedy amendment to protect an employer with 15 or fewer employees from losing their health care insurance. The White House estimates—and that is rather conservative, I believe, because the White House estimated even more Americans will lose their health care insurance under the Kennedy bill could cause 4 to 6 million Americans to lose their health care.

The least the Senate can do to protect small business employees from losing their health insurance and protect small employers from unnecessary liability is to pass this amendment. We are talking about employers that have 15 to 2 employees. Currently, numerous Federal laws provide exemption for small businesses and their employees.

In my previous amendment we talked about the 50 employee exemptions. The other side made the point it was unfair because we were creating a bright line and those with 49 employees would not have an opportunity to take advantage of benefits provided in the amendment as those without. This amendment draws a bright line. We are addressing the very small employers of the small business sector; that is, 15 employees or fewer. True, we have a bright line, but it is not unusual in Federal law to draw bright lines trying to differentiate where the respective law should deal with different sizes of employees, trying to draw a line between small employers and the larger employers. Let me cite for Members some examples. The Occupational Safety and Health Act exempts businesses of 10 or fewer employees, workers, in certain low-hazard industries. The Americans with Disabilities Act defines the term "employer" as a person who has 15 or more employees engaged in an industry affecting commerce. This is the area we have decided in this amendment to differentiate the very small employers from the other small businesses of this country. The Worker Adjustment and Retraining Notification Act, commonly referred to as the Plant Closing Act, defines the term "employer" as any business that employs

Mr. ALLARD. Mr. President, my amendment provides another opportunity for the Senate to protect the country's employees of small businesses. Yesterday, the Senate voted on an amendment I offered that would have protected employees of small businesses from losing their health care insurance.

I am offering another amendment that gives Members another chance to protect those employees. My amendment, cosponsored by 12 Senators, protects employers from losing their health care insurance. Small business represents over 99 percent of all employers in America. If the Kennedy bill passes in its current form, small business employees will be subject to increased health care premiums and to the possibilities of losing their health care insurance altogether.

Based on studies from the Congressional Budget Office and the Lewin Group, the Kennedy bill will cause more than 1 million Americans to lose their health care insurance. The White House estimates—and that is rather conservative, I believe, because the White House estimated even more Americans will lose their health care insurance under the Kennedy bill could cause 4 to 6 million Americans to lose their health care.

Again, I am offering this amendment to protect the Senate with another chance to protect employees of small business from losing their health care insurance.

I inquire the time remaining on my side?

The PRESIDING OFFICER. The Senator has 9 minutes.

Mr. ALLARD. Mr. President, I reserve the remainder of my time.
with 15, we will be down to 10, we will be down to 5, and then we will be down to 3.

We have addressed this issue. Every Member of this body ought to know it. I think this is a redundant amendment, one that has been addressed. The arguments are familiar. I yield to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, this is clear filibuster by amendment. I have been here a long time. I have seen this happen. As the Senator from Massachusetts pointed out, we have been here; we have done that. Next, as the Senator from Massachusetts indicated, it will be 10 employees, 5 employees, 4 employees, 3 employees.

When the time has expired on this amendment, I will offer a motion to table. This amendment should not be discussed. It should not take up the serious time of the Senate that has been so well spent these past 9 days.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. I yield 2 minutes to the Senator from New Hampshire.

Mr. ALLARD. I am offering this from Colorado on this amendment. This bill is incredibly complex—to be kind. It has thousands of moving parts. The bureaucracy, which is going to be created and empowered as a result of it, is going to be massive. The lawsuits are going to be massive. The number of irreducible events is going to be massive. It is going to be incomprehensible to large amounts of the American working public and their employers.

It is only elementary fairness that we say, to at least the smallest employers that are the ones creating the jobs in America today, you are not going to have to pay what will undoubtedly be your entire profit margin in order to try to comply with this new piece of legislation.

For employers that have 15 or fewer employees, it is simply fairness that we take them out from this cloud and give them the opportunity to give their people jobs and not be overwhelmed by the cost of this bill.

We have talked a lot about the costs of this bill, but let me cite a couple of figures. The cost to defend the average malpractice suit is $77,000. There are very few employers in this country that have less than 15 employees that are making more than $77,000. They are running a small business, a grocery store or restaurant, gas station, small retailer. These are the smallest businesses that create the most energy in our economy. That is where our jobs are created; they are created in these small businesses.

Let’s not have those folks who are willing to be entrepreneurs for the first time in their lives, the first-time entrepreneurs who are willing to step into the risk pool of the capitalist system and, as a result, create jobs, let’s not burden them with the bureaucracy and cost of this bill which we know is going to be extraordinary. Let’s pass the Allard exemption for employers with 15 or fewer employees.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, let’s just get back to reality. We are talking about this afternoon. First of all, the majority of small businessmen and women in this country are not involved in decisionmaking that affects the well-being of the employees. We know that. They basically are busy enough. It has been explained by Members that they are involved in running their businesses. This is really not an issue so much in terms of small business.

The only people that will be affected by this are the small businessmen or women who get hold of the HMO where they have the insurance and says, look, if any of my employees are going to run up a bill more than $25,000, call me up because I want to know. When that happens, the employer says: Don’t give them the treatment. As a result of not getting that treatment, the child of an employee is put at risk, and perhaps dies, or the wife of an employee, who has breast cancer, is denied access into a clinical trial and may die as a result. This is a likely scenario. The employer that is actively involved in denying the benefits to those employees. Are we going to say that all these employers, with 15 or fewer employees, are going to be completely immune from when that employee that has to worry about this is one who is going to be actively involved in making a decision that puts their employees at risk? We built in the protections with the Snowe-Deweine amendment. We built them in and we have supported them. But it seems to me that workers in these companies, which make up about 30 percent of the American workforce, ought to be given the same kinds of protections against the employers that are going to make that decision.

Make no mistake about it. The great majority of employers do not do that today. Only a very small group do. But if the small group that do that are able to get away with it, there is an open invitation to other small businesses and women, in order to keep their premiums down, to get involved in similar kinds of activities. This will offer carte blanche so that 30 percent of the employers will not be covered one bit with this legislation. It makes no sense. It didn’t make any sense when it was first offered by Senator Gramm; it didn’t make any sense when it was offered previously by Senator Allard; and it makes no sense at this time.

The only people who have to worry are those employers that are going to overcome, scheme, and plot in order to disadvantage their employees in ways that are going to bring irreparable harm, death, and injury to them. If you want to do that to 30 percent of the workforce and put them at that kind of risk, this is your amendment.

I do not think we should. I hope the amendment will be defeated.

The PRESIDING OFFICER (Mr. CARPER). The Senator from Massachusetts has 9 minutes 23 seconds remaining. Who yields time?

Mr. ALLARD. Mr. President, I yield 3 minutes to the Senator from Oklahoma.

Mr. NICKLES. My friend and colleague from Massachusetts said if you want to do this, you have to sponsor this amendment. This amendment is not a substitute for this amendment. I am not sure I want to do what he just described, but I want to sponsor this amendment with my colleague and friend from Colorado. I ask unanimous consent to be listed as a co-sponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. This amendment is vitally important for small business. It will not only curb the liability that the underlying bill, says employers beware, we are coming after you because we do not exempt employers.

Interestingly enough, we exempt Federal employees, we exempt Medicare, we exempt government, but we do not exempt private plans. Anybody who has a private plan, employers beware because they can sue you and they can sue the plan.

Oh, I know we came up with a little cover, and maybe you can put the liability under the form of a designated decisionmaker, and they can assume it. But guess what? They are going to charge the employer for every dime they think it is going to cost. And my guess is, the designated decisionmaker will want to have enough cover so they don’t go bankrupt, so they are going to charge a little extra to make sure they have enough to protect them from the liability and the costs that are associated with this plan.

The cost of health care is exploding. Health care costs went up 12.3 percent nationally last year. They are supposed to go up more than that this year. That is why small business, the cost of health care for small business is 20, 21, 22 percent, and that is without the cost of this bill.

CBO estimates the cost of this bill is 4.2 percent. But if you assume there is going to be a whole lot of defensive medicine, you can probably double that figure. And with the liability, you are probably looking at another 9 or 10 percent on top of the 20 percent for small business. Those are not figures I am just grabbing out of the air, I think they are the reality.

My friend and colleague from Colorado, Senator ALLARD, is saying: Wait a minute. Let’s exempt small employers, those people struggling to buy health care for the first time. Let’s protect them and make sure they won’t be held to the liability portions.

Federal employees are not able to sue the Federal Government. Why should we say: Oh, yes, you can have a field of green and the cost of purely to protect them—to surely protect them—is to adopt the Allard amendment.
I urge my colleagues to vote in support of the Allard amendment to protect small businesses.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Colorado has 3 seconds remaining.

Mr. ALLARD. If you have finished, I will wrap up and then yield the time.

Mr. KENNEDY. That is all right.

Mr. ALLARD. Thank you, Mr. President.

Mr. President, I have had the experience of starting a business from scratch and trying to meet a payroll. As far as I am concerned, too few Members of the Senate have ever had the opportunity to be in business for themselves and had to meet the challenges of starting a business. I personally know how tough such a business can be and how hard it is to run a successful business. I have had to face those tough decisions. They are not pleasant.

There are a lot of small business employers all over this country that are sending letters to Members of this Senate about the very serious concerns that have been expressed by the Senator from Oklahoma, the Senator from New Hampshire, and numerous other Senators, at least on this side of the aisle, about the impact of this particular piece of legislation on small business.

Let me take one example. There is a Mr. Terry Toler, for example, of Greeley, CO. I represent the State of Colorado. He runs a small construction business. He employs three workers. The health insurance he provides to his employees also helps take care of the needs of his family. Terry cannot afford the costs that would come with the Kennedy bill in its current form.

Last year, Terry’s company had a 65-percent increase in health insurance premiums and costs. This increase was on top of Terry’s other insurance costs, including equipment insurance, professional liability insurance, and general liability insurance. If this bill is passed in its current form, the company’s health insurance rates will increase even further. As a result, he may have to drop the health insurance he provides to his employees and his family.

My amendment will protect Terry and his employees from losing their health insurance. Terry is one of hundreds of small employers in Colorado that would be forced to jeopardize their health care insurance. We need to protect hard-working employees from losing their health insurance.

Let me share some further concerns of this small businessman. Large employers can obtain health insurance at a much lower rate. As a result, small employers cannot compete with large companies. In a tight labor market, employers compete for the best employees. These are all competitive issues about which a small businessman is concerned. When this kind of legislation moves forward, you can understand why.

I have heard comments from another small businessman in Springfield, CO, who has expressed his concern. He writes:

Health care costs are already prohibitive. Adding the law-given right to sue for punitive damages can only increase costs. A patient bill of rights is important, but not at the price of Kennedy’s bill.

He further states:

...liability limits are a good way to help cap rising health care costs.

As an employer, he must evaluate the price tag that comes with paying for health care. He believes it is prohibitive.

According to a recent survey of some 600 national employers, 46 percent of employers would likely drop health care coverage for their workers if they were exposed to new health care lawsuits.

This is not a good bill for small business. The adoption of the Allard amendment would make it better. So I am asking my colleagues in the Senate to join me in protecting employees of small business, thus protecting the employees’ health care they currently enjoy. If the Kennedy bill passes in its current form, the health care protection of more than 1 million Americans will be jeopardized. Colleagues should support this amendment to protect employees’ health insurance and limit small employer liability.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Colorado has 3 seconds remaining.

Mr. ALLARD. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator’s time has expired.

Mr. KENNEDY. I say to the Senator, I am going to make a brief statement, and then he can wind up. I will yield him 2 minutes after I make a brief statement.

The PRESIDING OFFICER. The Senator has 9 minutes.

Mr. KENNEDY. I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, we acknowledge the burden that is placed upon small business and the costs of their insurance. The Senator is quite correct by saying anywhere from 20 to 30 percent more. They are constantly having to look at newer kinds of companies as they are being knocked off the insurance rolls. We understand that. We are prepared to work with the Senator on this.

This is an important issue. I am amazed that small businesses in my own State can really survive with the premiums that they have to be able to find ways to help and assist them; but this is not it.

We had $3.5 billion of profits last year from the industry. They have already asked for a 13-percent increase in their premiums this year. They were 12 percent last year. That is generally, without this.

We have been over this during the debate, that the cost of this is less than 1 percent a year over the next 5 years. We have also gone over this and found out that some of the wealthiest Americans are the heads of these HMOs. Mr. McGuire makes $54 million and got $350 million in stock value last year—$400 million. That has something to do with the premiums for those companies.

This is a very simple kind of question. He talks about protecting the employer. We are interested. They are protected unless they go out and change and manipulate their HMO to disadvantage the patients who are their employees and deny them the kinds of treatments that would be protected and with which we are all protected.

I am reminded, myself, that my son had cancer. I was able to get a special乖 for him and to be able to get into a clinical trial. I want those employees who are represented by the 15 not to be denied that same opportunity. I did not have someone who was riding over that and denying me that. But that is happening in America. It might not be happening in Colorado, but it is happening in America, where employers are calling up and saying: Don’t put them in those clinical trials. We are here to stand and say: We are going to protect them. We are going to stand with you, with the small business, but let us protect the women who need that clinical trial for cancer and the children who need that specialist. Why deny them those protections? That is what this amendment is all about.

I am prepared to yield the last 2 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I thank the Senator from Massachusetts.

I am continuing to hear from small business employers. And other Members of this Senate, as well, are hearing the same message I am. They are concerned about the rising cost of health care and the impact it will have on their business and the impact this particular piece of legislation is going to have on costs.

They are also concerned about the increased number of lawsuits that will be faced by small business employers if this particular piece of legislation passes.

My amendment provides some relief for small businesses of 15 employees or
fewer. When you first glance at this bill, as I did, you say: It looks as if the employer has been exempted. But when you read the fine print, then you see there is a circle around it, and you find that the small businessman gets pulled in and Federal employees are subject to lawsuits, more lawsuits that he is facing now. That puts at jeopardy the health care he is currently providing for his employees.

I am asking the Members of the Senate to join me in making sure small business doesn’t get pulled into this ever-expanding web of tangled lawsuits into which they are going to be pulled if this particular bill passes.

The Allard amendment is a good amendment. I hope Members of the Senate will join me in protecting small businesses, those of 15 employees or fewer.

Mr. President, I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I yield back my time.

The PRESIDING OFFICER. The time is yielded back.

Mr. ALLARD. Mr. President, I ask unanimous consent to print in the RECORD an editorial run in the Fort Collins Coloradoan.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

PATIENTS’ BILL OF RIGHTS NOT END-ALL TO HEALTH CARE ISSUES

Physician (and consumer), heal you, should be the motto for the Patients’ Bill of Rights now under consideration by Congress.

The legislation, which actually includes several amendments, focuses on whether consumers can sue their health care providers for not approving treatment deemed medically necessary. Congress should restore that power to consumers, but only if the suits are based on actual damages, rather than punitive penalties. Those penalties have led to some outrageous settlements, and those legal costs have been passed on to employers and employees.

But to be wise about this legislation is to believe that this legislation can solve the broader issues of the rising cost of health care.

Many symptoms combine to make medical care costly: Pharmaceutical companies are advertising directly to consumers rather than doctors, which means patients may demand the more expensive brand-name medicines. Low deductibles for doctor office visits benefits consumers upfront, but health care providers shift their expenses by demanding higher premiums, which have increased 10-fold in the past decade for employers.

Privately owned health care providers face the sometimes-conflicting mission of answering to stockholders, who want profits, and their customers, who demand lower premiums and broader access to care. All the while, health care CEOs are receiving bonuses worth millions.

Managed care is not all negative. Without a competitive market, many, including this one, could not afford even simple doctor’s visits to maintain their health. Those without insurance usually have to turn to acutely expensive emergency rooms for health care. The focus on preventive care came about, in part, from health care providers who were seeking to keep their costs down, but the process of hospitals and health plans.

Legislation will not replace the need for innovation and close scrutiny by consumers and health care professionals regarding how the system works. Some providers are using a triage-type system to evaluate and treat patients efficiently; employers are shopping around for health plans that fit their needs; providers are considering tiered-cost plans; and patients bear responsibility for keeping themselves as healthy as possible.

Congress could pass laws that give the right to sue providers and exempt employers who have no control over medical decisions. Still, turning the decision over to the courts is expensive and unsafe for lawyers seeking the most benefit. Another option is to rely on a binding mediation process or an independent panel to weigh medical coverage decisions to keep the focus on health care and off litigation.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. REID. Mr. President, I move to table the Allard amendment and ask for the yeas and nays. Under the previous agreement, that will be set aside and we will go to the Nickles amendment now.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

AMENDMENT NO. 850

The PRESIDING OFFICER. Under the previous order, the pending amendment is set aside and the Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma (Mr. NICKLES) proposes an amendment numbered 850.

Mr. NICKLES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To apply the patient protection standards to Federal health care programs)

On page 131, after line 20, insert the following:

TITLE III—APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS.

(a) APPLICATION OF STANDARDS.—

(1) IN GENERAL.—Each Federal health care program shall comply with the patient protection requirements under title I, and such requirements shall be deemed to be incorporated into this section.

(2) CAUSE OF ACTION RELATING TO PROVISION OF HEALTH BENEFITS.—Any individual who receives a health care item or service under Federal health care program shall have a cause of action against the Federal Government under sections 502(n) and 514(d) of the Employee Retirement Income Security Act of 1974, and the provisions of such sections shall be deemed to be incorporated into this section.

(3) RULES OF CONSTRUCTION.—For purposes of this subsection—

(A) each Federal health care program shall be deemed to be a group health plan; and

(B) the employee, as defined in section 3(9) of subtitle A of title I, shall be deemed to be the plan sponsor of each Federal health care program; and

(C) each individual eligible for benefits under a Federal health care program shall be deemed to be a participant, beneficiary, or enrollee under that program.

The legislation, which actually includes the Allard amendment, is set aside and the Senator from Nevada is recognized.

Mr. NICKLES. Mr. President, this amendment expands the coverage of the bill basically to all Americans.

I have heard countless sponsors of the bill say we should cover everybody who needs basic protections. I have heard it time and time again. I have heard it on national TV shows, Sunday morning shows: We should make this apply to everybody. Some argue, shouldn’t these protections be reserved to the States because they have historically done it? But the legislation before us says, no, the Federal Government will do it; we will do it for all private plans. Usually they don’t even say all private plans. They usually say for all plans.

The truth is, the legislation we have is a mandate on the private sector, but we have exempted the public sector.

It is amazing to me, almost hypocrical—I don’t want to use that word, impugning anybody’s motives—but it brings me to think we are so smart and wise that we are going to mandate these patient protections on every plan in America, supersedes State protections already present, and we don’t give them to a group of employees over whom we really have control. We do have control over the Federal employees health care plan. We can write that plan. We have control. We write the checks. Federal employees pay about a fourth, but the Federal Government pays three-fourths. We have direct control over Federal employees health care plans, but they are not covered by this bill.

Federal employees in the State of Delaware or California or Oklahoma usually get their health care from Blue Cross or Aetna or whomever. They get it just like any other employee, but they are Federal employees. They don’t get the patient protections under this bill. They don’t have the appeals process under this bill. They don’t have the legal recourse that is under this bill. But the legislation before us says, no, the Federal Government historically done it? But the legislation before us says, no, the Federal Government will do it; we will do it for all private plans. Usually they don’t even say all private plans. They usually say for all plans.

The truth is, the legislation we have is a mandate on the private sector, but we have exempted the public sector.

My friend and colleague Senator Kennedy just talked about clinical trials, and maybe they help somebody. I looked at the language for Federal employees. We are getting ready to mandate a very expensive provision, probably fairly popular, that says under the McCain-Kennedy bill we pay for clinical trials, for if it has any Federal connection whatever. Federal employees aren’t covered by the clinical trials section of this bill.
They may be under individual plans, but they are not by mandate, by patient protections. Some plans may offer them; some plans may not. There is not a dictate.

We are getting ready to mandate a very expensive provision that is not even something that is being considered at the Mayo Clinic, something that is being considered at the Mayo Clinic, something that is being considered at the Mayo Clinic, something that is being considered at the Mayo Clinic.

What about Indian Health Service? What about our veterans? Our veterans aren't covered by this bill. They don't have the same patient protections. They don't have the same expedited review process. Shouldn't they be covered?

Granted, this amendment could cost a lot of money, but this bill will cost a lot of money. I have heard a lot of people say this bill only costs a Big Mac a month, it is not all that expensive, it is only just a little bit. I disagree with that. I am also struck by the fact that we are quite willing to mandate this on every city, every private employer, but we don't mandate it on Federal employers. We don't do it on Federal programs. We do it on State programs. We do it on Federal programs. We do it on Federal programs.

We don't have any objection to dictating how other governments have to do it. We will tell them how to do it. We just don't think the Federal Government should do it. We don't think the Federal Government should do it. We don't think the Federal Government should do it. We don't think the Federal Government should do it.

If this is that great of a program, and I have some reservations. I think this bill goes far too far.

My point is, Federal employees don't have these patient protections. We are getting ready to mandate something on the private sector that we forgot to do for the public sector.

It is almost the case all the way through the bill. For pediatricians under the McCain-Kennedy bill, we allow parents to designate a pediatrician for their children. That sounds fine. I am sure if we voted on that, it would be unanimous. That is not a dictate for Federal employees. Some plans may have it; some plans may not.

My point is, Federal employees don't have these patient protections. We are getting ready to mandate something on the private sector that we forgot to do for the public sector.

It is interesting because I know President Clinton made a big deal out of the fact, saying: Congress is not acting. I am going to have an Executive order and make Federal employees have these patient protections. I will do it by Executive order. Well, he didn't do as much as we are getting ready to do on the private sector. That is my point.

I expect that what we are getting ready to do, that the patient protections we are passing, the examples I have listed—and that is not the total—are much more expensive than what has already been done. The same thing would apply for Medicare. If all these patient protections that have been espoused are so important, shouldn't we give those to senior citizens? Shouldn't senior citizens have the same expedited review process, internal/external appeal processes? I don't know if we are going to apply it on all the private sector? I would think so. We all love our senior citizens, our moms and dads and grand-
amendment. I would like to take the amendment. We are studying now the budget implications because I don’t want to take it and then find out that we have the Senator from Oklahoma come over and say we have exceeded the budget limitations and provisions. We have blue slates and therefore the whole bill comes down. We know what is happening now. The basic protections of this legislation, according to the Congressional Research Service—the patient protections in the McCain-Edward bill are not made with the exception of the right to sue. That is what we are checking out at the present time in terms of what would be the estimation. Otherwise, I am all for it.

We have now in the Medicare systems that are involved in HMOs, they have the right to sue on this. As we saw some of those elements on the executive order, they have not been altered by the administration. I would like to make them statutory. No one would like to make them statutory more than I. I am about to wrap my arms around the Senator and bring him in and say I am in on this.

Hopefully, as our leader pointed out, after all the lectures that I have had—I don’t say that in a derogatory way to my friend from Oklahoma—about health insurance—we heard about how we are going to increase the numbers of those who are going to lose their health insurance. We are not dealing with that problem, with the $4 million. We will have an opportunity to invite your participation on these issues. We had some votes on the extension last year in terms of the parents on the CHIP program and virtually every Republican voted against it. To the extent that we saw progress made with the good support of Senator Smith and Ron Wyden, we now have about $28 billion, $29 billion in the Finance Committee. It can be used for the expansion of health care. We certainly want to utilize that. That is only a drop in the bucket. Our attempts in the past to get reserve funds out of the Finance Committee, which the Senator is on, so we could move ahead with a health insurance program have fallen on deaf ears.

I hope that all those—I will have a talk on that later on because I am taking all of those statements and comments—Republican leadership have not been giving over the period of the past days, all talking about health insurance, and we will give them a good opportunity. Hopefully, they won’t have to eat their words. We will welcome some of their initiatives. We know what they are against insurance. We want to know what they are for in terms of getting some health insurance.

Well, I will say that I am going to recommend to our side that we accept the Nickles amendment. So I am prepared. The Senator made such a convincing argument, and it has taken a little while. He left out HCFA. That was the only thing he left out. That is why we have been so persuaded. I know HCFA is not going to have anything to do with this amendment the Senator offers because, otherwise, I knew he would not offer it.

Mr. REID. Will the Senator yield?

Mr. KENNEDY. Mr. President, I neglected to do this earlier and I meant to do it. I wanted to compliment Senator Gregg and Senator Kennedy for their leadership on this bill and their leadership on the education bill because it is kind of unusual that we have two committee chairmen and two people who are for removing two major pieces of legislation consecutively. So they combined and spent about the last 2 months on the floor. That is not easy.

I will always have enjoyed debating and working with colleague from Massachusetts, and we are good friends. Occasionally, we agree. We have had two or three amendments, and we have had great oratory and, occasionally, we still agree on amendments. I appreciate that. We ended up having more compromises and agreeing union plans today. We got very close to an agreement. We will make that, I guess, in the managers’ amendment. I appreciate that. I appreciate his willingness to accept this amendment.

I will be very frank and say we don’t know how much this is going to cost, but frankly, we don’t know how much this costs in the private sector. There is a point to be made. The Senator said maybe we can accept it, and possibly it can work out to give patient protections, but I don’t know about the right to sue. That might be pretty expensive. We are doing that on the private sector as well. We do not know how much that is going to cost, but it will be very expensive.

Federal employees have a lot of protections, but they do not have near the protections we are getting ready to mandate on the private sector.

Medicare has some patient protections. It is a question of the patient protections that we will be mandating on the private sector. They do not have an appeals process that is as expedited as this. I do not have a clue whether Medicare can comply with this. It takes, in many cases, hundreds of days to get an appeal completed in Medicare. We have a very expedited appeals process in this bill. I happen to support that appeals process, and it would be good if Medicare could have a very concise, complete, final appeals process. I am hopeful, that would be binding. We improved the appeals process in this bill today with the Thompson amendment, and I compliment Senator Thompson for his leadership on that bill.

I would be very troubled to go back to my State of Oklahoma and have a town meeting and tell employers they have to do this, this, this, and this; they have to do this; if things do not work out, they might be sued for unlimited damages, and have one of them raise their hand and say, “Did you do that for Federal plans,” and say, “No, we didn’t. We just did it for you. We think maybe we are not going to do it for Federal plans.”

We have control over Federal plans. Those are the ones over which we really have control. I would find it very troublesome. I was one of the principal sponsors of the Congressional Accountability Act a few years ago who said Congress should live under the rules like everybody else. I remember some of my colleagues saying: Don’t do that; if we make the Capitol comply with OSHA, it is going to be very expensive. The Capitol will have to walk into town of the Capitol today, will find a lot of electrical wires that would not pass any OSHA inspection.

It bothers me to think we are going to mandate on every private sector health care plan: have this, this, this, and this, all very well-intentioned, I might add, but some of which will be pretty expensive. I would find it troubling if we mandate that on the private sector and say: Oops, we forgot to do it for Federal employees.

That is the purpose of my amendment. I appreciate the willingness of my colleague from Massachusetts to accept the amendment.

Mr. KENNEDY. Mr. President, I listened to the Senator talk about being in a town meeting and the questioner says: How in the world, Senator, can you apply all these provisions to our short business and small business? How do you apply all these provisions to our small business and you are not doing that to the Federal employees?

I would think at a town meeting in my State of Massachusetts someone might stand up and say: Senator, how come your health care premium is three-quarters paid by the taxpayers; why don’t you include me? That is what I would hear in my State of Massachusetts. That is what I hear.

Maybe they are going to ask you about the right to sue where hard-wired people have hard-wired people putting together the resources to get the premiums and get the health care. They wonder why the Federal Government is paying for ours. If we are being consistent with that, I say to the Senator from Oklahoma, we ought to be out here fighting to make sure their health care coverage is going to be covered. I do not see how we can have a town meeting and miss that one.

It is interesting, as we get into the Federal employees, we have 34, 35 different plans. What other sector in America has that kind of choice? The people say, what about your appeal? Generally speaking, you do not need an
Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MUKROWSKI) are necessarily absent.

The yeas and nays resulted—yeas 57, nays 41, as follows:

YEAS—57

Akaka Dorgan Lieberman
Baucus Durbin Lincoln
Biden Edwards McCain
Bingaman Feingold Mikulski
Boxer Feinstein Miller
Brown Fitzgerald Murray
Byrd Graham Nelson (FL)
Cantwell Grassley Nelson (NE)
Carnahan Hollings Nickles
Carper Hollings Reed
Chafee Inouye Rockefeller
Clinton Johnson Sarbanes
Conrad Kennedy Schummer
Corzine Kerry Snowe
Daschle Kohl Stabenow
Dayton Landrieu Torricelli
DeWine Leahy Weicker
Dodd Levin Wyden

NAYS—41

Allard Enzi Roberts
Allen Enzi Sessions
Baucus Enzi Shelby
Burns Enzi Smith (MD)
Byrd Enzi Smith (OK)
Bingaman Graham Specter
Baucus Grassley Stevens
Burns Hollings Thomas
Burns Inouye Thompson
Byrd Inouye Thurmond
Baucus Inouye Voinovich
Collins Inouye Warner
Ensign Inouye Warner

NOT VOTING—2

Domenici Murray
Mukowski

The PRESIDING OFFICER. The PRESIDING OFFICER (Mr. MUKROWSKI) on the vote, the yeas are 57, the nays are 41. The point of order is sustained and the motion fails.

AMENDMENT NO. 821

Under the previous order, there are now 4 minutes evenly divided prior to voting on a motion to table the Allard amendment No. 821.

The motion (No. 850) was agreed to.

Mr. KENNEDY. I move to reconsider the motion and to ask for a recorded vote.

Mr. MCCAIN. I move to reconsider the motion.

Mr. NICKLES. I move to reconsider the motion.

Mr. REID. Regular order, Mr. President.

MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, there are now 4 minutes evenly divided prior to voting on a motion to table the Allard amendment No. 821.

Mr. KENNEDY. I move to reconsider the motion.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MUKROWSKI) are necessarily absent.

The result was announced—yeas 55, nays 43, as follows:

YEAS—55

Akaka Dodd Lieberman
Baucus Dorgan McCain
Biden Durbin Mikulski
Bingaman Edwards Miller
Boxer Feinstein Murray
Brown Fitzgerald Nelson (FL)
Byrd Graham Nelson (NE)
Cantwell Grassley Nickles
Carnahan Hollings Reed
Carper Hollings Schumer
Chafee Inouye Snowe
Clinton Johnson Stabenow
Corzine Kerry Torricelli
Dole Landrieu Warwick
Dayton Leahy Wyden
DeWine Levin
Mr. FRIST. Reserving the right to object, I would like to talk to Senator GREGG on the time agreement and also restrictions on the amendment with Senator BREAUX. If I can have an opportunity to check with Senator GREGG.

Mr. KENNEDY. We are operating on good-faith agreements. We have done very well. This is the intention. We will wait to hear from the Senator.

I understand Senator CRAIG and Senator SANTORUM want to change the order. Senator CRAIG will be the next amendment, followed by Senator SANTORUM.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order of the SANTORUM amendment and the Craig amendment be switched and that the time allotted be the same. Senator SANTORUM is still perfecting a portion of his amendment.

Mr. REID. Mr. President, we were planning on the other order. The person who will be responding to the Senator from Idaho is not here.

Mr. KENNEDY. We prefer to go the other way. We announced the order, and this has changed. We will need to put in a quorum call to get the person who will be addressing this amendment.

Mr. CRAIG. I am sorry for this delay. Senator KENNEDY. We are moving along, and we will do the best we can. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, there was an agreement that the Santorum amendment would proceed and I would follow. We agreed we would switch those. I think that is the current agreement that has been accepted. I see the Senator from Montana is on the floor, the chairman of the Finance Committee, so with that, I send my amendment to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The legislative clerk read as follows:

Mr. CRAIG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with:

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To express the sense of the Senate regarding making medical savings accounts available to all Americans)

At the appropriate place insert the following:

SEC. 85. SENSE OF THE SENATE REGARDING FULL AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) FINDINGS.—The Senate finds:

(1) Medical savings accounts eliminate bureaucracy and put patients in control of their health care decisions.

(2) Medical savings accounts extend coverage to the uninsured, according to the Treasury Department, one-third of MSA purchasers previously had no health care coverage.

(3) The medical savings account demonstration program has been hampered with restrictions that put medical savings out of reach for millions of Americans.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that a patients’ bill of rights should be paired with private-sector medical savings accounts.

Mr. CRAIG. Mr. President, I had planned up until this hour ago to offer a detailed amendment on medical savings accounts that I think fits appropriately into any discussion about patient’s rights in this country. The first and foremost right is access to health care.

Mr. KENNEDY. We prefer to go the other way. We have fought for patients’ rights from the very day we defeated the Clinton health care plan a good number of years ago, which was a massive effort to use government to take over our health care system, which would have largely let bureaucrats decide whether your family would get the medical care they need.

It was a Republican Congress that stood up for patients’ rights by creating medical savings accounts for the first time. Medical savings accounts, in my opinion, are the ultimate in patient protection for they throw the lawyers, employers, and bureaucrats out of the examining room and leave decisions about your health between you and your doctor.

What has been most fascinating about the current medical savings account scenario in our country is that we have limited them to about 750,000 policies. Yet, a good many people have come to use them even though we have made it relatively restrictive and we have not opened it up to the full marketplace.

What is most fascinating about the use of medical savings accounts is the category that all Members want to touch. We hear it spoken of quite often. That is the large number in our country of the uninsured. Since we offered up a few years ago this program, 37 percent of those who chose to use it were the uninsured of America. In other words, it became one of the most attractive items to them because it offered them at a lower cost full access to the health care system.

It proves something many colleagues do not want proved: That given the opportunity, Americans can afford to
June 29, 2001

CONGRESSIONAL RECORD — SENATE

That is why I think it is important that this Senate now express its will and its desire to continue to support medical savings accounts. That is why it appropriately fits inside the broad discussion of a Patients’ Bill of Rights.

I do not believe a Senator’s motive on the floor. Republican and Democ- rat alike want to make sure all Americans have access to health care. We want a Patients’ Bill of Rights that works. We have had a President say very clearly we can provide us with a Patients’ Bill of Rights that creates stability, that allows the kind of flexibility we need to assure that em- ployers can continue to provide health care without the risk of being dragged into court because of a health care pro- gram that they may be a sponsor of, then he will veto it.

But here is a President who also sup- ports maximizing choices in the mar- ketplace. How you maximize choices in health care depends, in this case, on whether you have a medical savings account, then you can gain direct access to an OB/GYN. If your child is ill, you have direct access to a pediatrician. With MSAs there are no gatekeepers; you are the gatekeeper. There are no mandatory referrals; you are the one who makes the decision, you and your doctor. The only people involved in your personal decisions, once again: Your family, you, and the medical professional you have chosen or to whom your doctor has referred you. That is the phenome- nally great independence to which we are arbitrarily deciding Americans cannot have free access.

I hoped to offer a much broader amendment, but I knew it would have to face that tough test of dealing with the Senate rules and all of that because it would deal with taxes and it would deal with insurance. As a result, instead of making the changes in the law that ought to be made because even the pro- gram I am talking about that has been so accepted expires this year and it is the responsibility of this Congress to expand it and make it available. Instead we are still talking about the rights of lawyers, not the rights of the patient.

The rights of the patient are opti- mized if you provide the full marketplace access to medical savings ac- counts. Since we introduced the lim- ited pilot program, wonderful things have happened. The very people we were trying to reach, the uninsured, are getting health coverage. And in our society today, many of the unin- sure are the children of working men and women who can’t afford to add them as an extra beneficiary to their health care coverage because of the costs, and they want to do that when their employer that al- lowed them to have a medical savings account.

Medical savings accounts combine low-cost insurance, and a tax-preferred savings account for routine medical ex- penses. The catastrophic insurance pol- icy covers higher cost items beyond what the savings account covers.

I retain the remainder of my time.

The PRESIDING OFFICER. The PRESIDING OFFICER (Ms. STA- BENOW). Who yields time?

Mr. BAUCUS. I yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Sen- ator from Arizona.

Mr. MCCAIN. Madam President, I ap- preciate the efforts of the Senator from Idaho for small businessmen and women, for families who are unable to afford health care costs to be able to invest in a medical savings account. But I would like to put this issue in the context of this entire debate.

One of the first amendments pro- posed in this debate was to provide tax relief—no question any Senator thinks that is to allow open access to a medical savings account program that opti- mizes all the flexibility we have talked about. You reach out and bring in the patient, into the center of America and into the center of the health care decision to develop that one-on-one relationship with their doctor that has historically been the standard of health care in our country.

The PRESIDING OFFICER. The Senate yields time? The Senator from Mon- tahana.

Mr. BAUCUS. Madam President, I yield myself such time as I consume.

This is a Patients’ Bill of Rights bill. This is not a tax bill. This is not a De- partment of Defense bill. This is not a agriculture bill. This is not a foreign policy bill. This is a Patients’ Bill of Rights bill.

The amendment offered by my friend from Idaho has not been a Patients’ Bill of Rights amendment; it is a tax amend- ment. We will have ample time this year to take up tax legislation. We will take up tax legislation at some time, even though we had a huge tax bill al- ready this year. When I say “we,” I mean the Finance Committee. That is because the budget resolution provides $28 billion for health insurance legislation for Americans who are now uninsured.

I guess the committee will report out legislation this year which will include expansion of some benefits, perhaps CHIP, but perhaps also some tax provisions. There are many Senators who have good ideas to encourage Americans to have more health insur- ance—credits, deductions, and so forth. MSAs is just one way. MSAs, I might say, are actually, under the law, re- served for the most wealthy Ameri- cans. It is a particular kind of savings account which enjoys very lucrative, very beneficial status with respect to our tax laws; that is, contributions are not deductible, inside buildup is not taxed, withdrawals for medical pur- poses are not taxed, and only with- drawals for nonmedical purposes are, but not in the case when a person reaches the age 65. Essentially, they can be converted by wealthier people into a retirement account beyond a savings account.

They are just one way of, perhaps, providing health insurance for Ameri- cans. The main point being this is not a tax bill. The Finance Committee will take up the health insurance legislation this year as provided under the budget resolution. At the time we consider MSAs, we will consider other appro- priate ways to encourage Americans to have more health insurance. That is the appropriate time for this body to consider health insurance legislation.

That is when the Finance Committee can consider all the various ideas and report out a bill to the Senate which, in a more orderly way, because it is a tax bill which is dealing with tax matters. Particularly health insurance, will help more Americans.

I also say to my good friend from Idaho, as referred to by my friend from
Arizona, it is now 2 o'clock Friday afternoon. We have been on this Patients' Bill of Rights bill a long time. It is very good legislation. We are going to finally pass a Patients' Bill of Rights, after I don't know how many years tonight. That is my guess.

We will not pass it tonight—who knows when we will ever get to finally pass it—if we start going down this road of adopting sense-of-the-Senate resolutions.

This is the first sense of the Senate. We have not had one before. This particular resolution says this bill should include expansion of medical savings accounts. If we are not going to add savings accounts to the bill, we are, in effect, deciding we should not add medical savings accounts, a tax bill, on this bill.

I respectfully suggest to all my colleagues, the proper vote here is to vote no because it is, in effect, a tax provision. It is a sense of the Senate. We have not done that before. We are about ready to conclude passage of this bill and we will take up health insurance, tax legislation, at an appropriate time later.

I reserve the remainder of my time.

Mr. GRASSLEY. Mr. President, I want to discuss my vote on the Craig amendment that it is the sense of the Senate that the Senate act to expand access to Medical Savings Accounts.

I commend Senator CRAIG for offering this amendment. I support expanding access to MSAs. I recently introduced S. 1067, the Medical Savings Accounts Act of 2001. With my colleague from New Jersey, Senator TORRICELLI, my support for MSAs is long standing. Senator TORRICELLI and I introduced in the last Congress a comparable bill to expand access to Medical Savings Accounts.

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Mr. SANTORUM. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To dedicate 75 percent of any awards of civil monetary penalties allowed under this Act to a Federal trust fund to finance refundable tax credits for uninsured individuals and families)

At the end, add the following:

SEC. 9251. HEALTH INSURANCE REFUNDABLE CREDITS TRUST FUND.

(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the ‘Health Insurance Refundable Credits Trust Fund’, consisting of such amounts as may be:

(1) appropriated to such Trust Fund as provided in this section, or

(2) credited to such Trust Fund.

(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN AWARDS.—There are hereby appropriated to the Health Insurance Refundable Credits Trust Fund amounts equivalent to the awards received by the Secretary of the Treasury under section (a) of the Bipartisan Patient Protection Act.

(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Health Insurance Refundable Credits Trust Fund shall be available to fund the appropriate paragraphs (2) of section 1324(b) of title 31, United States Code, with respect to assistance for uninsured individuals and families with the purchase of health insurance under this title.

(d) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

Mr. SANTORUM. Madam President, one of the things I have repeatedly stated when I have spoken on this bill is that in S. 1052 there isn’t any provision that provides for access to insurance. There is nothing that increases the number of insured. There are pages and pages in this legislation that will decrease the number of insured and increase the rate of insurance in this country. If you would take a public poll, or take one in this Chamber, and were to ask people what is the biggest problem in the area of health care in this country, I think the overwhelming response would be the lack of insurance for 43 million Americans.

The bottom line is that we should be discussing how we are going to solve the biggest problem in the health care system, and that is providing some assistance for those who don’t have employer-provided health insurance. We don’t do that in this legislation.

In fact, it has been stated over and over again that this bill will add to the ranks of the uninsured. That is not a positive step forward. We can talk about the positive things—and there are positive things in this legislation, which I have been historically in favor of—but in my mind they are counterbalanced—in fact, overwhelmed—by the increase in the uninsured that will happen as a result of several provisions of this act.

One of the things I am going to do with this amendment is I hope to take one of those negative provisions—that being unlimited punitive damages in State court and a $5 million cap on punitive damages in Federal courts—and change it so that, as one writer has said, it is going to be borne by the insurance system and employers, and put that back into the system in the form of a trust fund for those who do not have employer-provided health insurance. So this is an amendment that says that all punitive damages awards that occur as a result of the causes of action provided for in this bill and create a trust fund which will be used to finance those who do not have employer-provided health insurance—in other words, the uninsured.

I think that is a way to ameliorate some of the damage caused by this legislation. The cost pulled out of the health care system through litigation, and through punitive damages in particular, will drive up the cost of health insurance. That money will go to lawyers, to a select few—principally the lawyers, but to a select few clients, patients, such as the gentleman from California who a couple of weeks ago hit the ‘lottery,’ with a $3 billion punitive damage verdict.

If that kind of award occurs within the health care system, imagine the impact on all of the insured in this country. Imagine the cost that is going to have to be borne by the millions of people who have insurance with a $3 billion punitive damage award. How much are your insurance rates going to go up if an award such as that is given? Where are we going to take the potential of a back-breaker award, or a series of back-breaker punitive damage awards, and put that back into the system in a way that helps those who do not have insurance.

So what I am suggesting is really a way to avoid some of the criticism that has been leveled against this bill, that this is full of litigation and costs, without any benefit coming back into the system. Remember, what we are concerned about here in this legislation are concerns about individual causes, obviously. But we also have to be concerned about the greater picture, which is making sure the public generally has
insurance and has quality health insurance.

As you can see from this chart, there is a real difference between the kind of health care people get when they are insured versus when they are not insured. A serious problem with barriers to care by insurance status.” In cases where they had procedures needed, but did not get the care for a serious problem, only 3 percent of the people who had insurance ended up in that category. So if they have insurance, it is a serious problem and a prescribed solution, they basically get the care. But if they are not insured, 20 percent—almost seven times the number of the uninsured—do not get the care they need. This says “skipped recommended test or treatment.” If they are insured, 13 percent of the people skip those tests. If you are not insured, almost 40 percent skip that.

Did not fill a prescription: 12 percent if you are insured; 30 percent if you are not insured.

Had problems getting mental health care: 4 percent versus 13 percent.

If we are concerned about quality care being provided to everyone when we have health care, the issue of the uninsured. This bill just deals with those who have insurance. I remind people, this bill only deals with people who have insurance. The biggest problem with patient care is those who do not have insurance, and that is reflected on this chart. We all know that is the fact from our own lives, knowing people who do and do not have insurance.

We cannot walk out of here with our arms raised high saying we have a great victory for patients when we accomplish two things: No. 1, we provide a little bit of protection—and that is what we do, provide a little bit of protection—for those who have insurance but cause millions of people who have uninsured care and get a lot of shunted areas, too. In this $3 billion award, they got $5.5 million in compensatory damages. Nobody is going poor, from the lawyer’s perspective, on filing this case.

When it comes to potential enormous awards for punitive damages, we need to plow some of this money back into the system. I am hopeful the Senate will take a step back and say this is one of the reasonable suggestions that can come about. If we are willing to take seriously this matter of providing quality health care, not just for those who have insurance but plowing that money back for those who do not.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from North Carolina.

Mr. EDWARDS. Madam President, I yield 5 minutes to the Senator from Pennsylvania. I am hoping the Senator from Pennsylvania is talking about when he talks about punitive damages. Punitive damages can only be awarded in a case where, in this context, an HMO or a health insurance company has engaged in virtual criminal conduct. There have to have been a maliciously, egregiously, outrageously for there to be a punitive damages award.

Now let’s talk about it in the context of a real case. Let’s suppose some young child needs treatment or a test and the insurance company executives meet and say: We are not paying for that test, and we do not care what the effect is. If something bad happens, so be it. We will live with that, but we are not paying for it. Even though it is covered by our policy, even though we know we are supposed to pay it, we refuse to pay it, period.

Let’s suppose because that child fails to get some treatment or test that that child crippled for life believe they have hit the lottery. That child’s life has been destroyed because of intentional criminal conduct on behalf of a defendant, in this case the HMO and the health insurance company.

It is not abstract. This is conduct that was specifically aimed at that child who is not abstract to the world. This is something that was aimed specifically at the child who is sitting in that courtroom, and the jury found—in order for this to be possible, the court requires that the jury find that the HMO has engaged in outrageous, egregious conduct.

This is what this amendment does: It says we are going to take away 75 percent of that child’s punitive damages award. That is what it says. We are going to impose a 75-percent tax on that child.

That is a real case. This is not an abstract academic exercise. This is reality. I say to my colleague, if we are going to start taxing people around the country 75 percent of their money—that would be that child’s money in this case. It does not belong to the Senator from Pennsylvania; it does not belong to me and, by the way, it does not belong to the Government unless this amendment is adopted. It belongs to the child. We are going to start taking 75 percent of people’s money, let’s not stop at that child. Why don’t we consider taking 75 percent of the $400 million that the CEO of one of these HMOs apparently made last year? That will help. We can go around the country and start picking all kinds of groups of people and put that money in a pot and do what we choose with it. This is not a serious response to a serious problem. My friend from Pennsylvania and I agree that the uninsured are a very serious problem in this country. It is an issue we need to address, and we need to address it in a serious way. None of us suggest that what we are doing with this Patient Protection Act will solve that problem. It will not. We have work left to do. There is no doubt about that. But we need to do that work in a serious, thoughtful, comprehensive way that will deal with the kids and the elderly in this country who do not have access to health insurance and who, as a result, do not have access to quality health care. The way to accomplish this purpose is by imposing a 75-percent tax on people, families who have been hurt by HMOs.

Mrs. BOXER. I ask the Senator to yield me 5 minutes.

Mr. EDWARDS. I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I thank Senator Ed was saying for using a hypothetical example of why this is a very cruel amendment which I hope will be voted down overwhelmingly. But I have a real case I can talk about in a moment.

This morning—it seemed like a very long time ago, and it was—I voted for an amendment by Senator SANTORUM to protect infants, to say that infants who are born should have the protection of this bill. I said to him: I certainly hope the law will cover all the way to the elderly, the most frail, should be covered by this bill.

What does my friend now suggest? A 75-percent tax on pain and suffering to go to the Federal Government for a Government program. This is unbelievable to me. A 75-percent tax on families who may be suffering because a child is permanently disabled, made blind, paralyzed, forever in a wheelchair, and then having to pay 75 percent of a punitive damage award that could go to help ease the pain of that child, that could hire people to take care of that child.

This is a cruel amendment. My friend always says he is for the children. This is not for the children. This is not for the patients. This amendment will take the funds away from those families who are in desperate need of money to build a life for someone deeply harmed by an HMO that had no conscience.

As my friend says, punitive damages are not gotten lightly. It has to be proven that you were willful, that you
were vicious in your intent. And then to say to that family: No, you have to give up 75 percent of that fund that you won because you were a victim. It is a victim's tax. It is a victim's tax that goes to a Federal fund, to a Government program called.

I always thought my friends on the other side trusted local people, a jury of our peers. They say: A local judge, someone from the community who can look at that family and understand what it means when they have a child permanently disabled.

A family with a little child in a wheelchair was coming to my office several years ago. The child was hooked up to every conceivable tube imaginable. The child was blind. There were caps on those punitive damages. And there was not enough money to hire the people that family needed to give their child the most decent life possible.

Now, top of this, as I understand this amendment, even in cases where there is a cap on punitive damages, this amendment still takes away 75 percent of the punitive damage. That is a slap at that victim, that child, the parents, the very children my friend said I had just 7 hours ago.

This is an amendment that says the Federal Government is more important than your family. The Federal Government will reach into a local jury; the Federal Government will take 75 percent of your award, of your punitive damages and put it into a Government fund.

This is a terrible amendment. I hope it will be defeated.

I yield the floor.

Mr. SANTORUM. Madam President, I make one clarification: There are eight States that currently do this. One of them is the State of the Presiding Officer, Mr. Kennedy. The State of Georgia takes 75 percent of punitive damages, less attorney fees, and puts them in the State treasury. That is the State law in at least eight States. Georgia was, in fact, the model we used for this legislation.

By the way, those States are exempt from this provision so we don’t take both the State and the Federal. If there is a State law, those are excluded under this act. This is hardly punitive. These are punitive damages, not compensatory damages. These are not pain and suffering.

I yield 2 minutes to the Senator from Louisiana.

Mr. BREAUX. I was not going to say anything, but the arguments have nothing to do with the substance of the amendment. Everybody ought to realize punitive damages have nothing to do with awarding a person who has been injured. A person who has been injured is compensated for economic losses, and there is no cap on economic losses. Everyone is compensated by the law for pain and suffering. There are no caps on pain and suffering. Punitive damages have one purpose. That is to punish the person who has caused the injury. That is the only purpose for punitive damages. To say to a company or an HMO, your conduct has been so outrageous, so egregious, you will be punished. That has nothing to do with the compensation for the injured plaintiff or child. They have already been taken care of.

The concept of taking punitive damages and saying, we will use those damages to help people who do not have insurance is a novel idea. Other States have done it. It is a good approach. I think we should support it because it has nothing to do with taking away anything to which an injured person is entitled. They have already been compensated in this bill with unlimited, uncapped economic and noneconomic pain and suffering damages. The arguments that I have heard have no merit considering the nature of the amendment.

Mr. SANTORUM. I make clear a couple of issues. Eight States have already passed legislation that redirects punitive damages to specific purposes. I mentioned Georgia is one; Florida allocates money into the medical assistance trust fund; Illinois, into the Department of Human Services; Iowa puts money into the civil reparation trust fund; Kansas puts money directly in the State treasury; Missouri, to the tort victims compensation fund; Oregon, to the criminal injury compensation fund; and the State of Georgia takes 75 percent of punitive damages, less attorney fees, and puts them in the State treasury. That is the State law in at least eight States.

This is a modest amendment that everybody ought to support because it will reach into a local jury; the Federal Government will take 75 percent of that fund that you have won because you were a victim. It is a victim's tax. It is a victim's tax that goes to a Federal fund, to a Government program called.

There are no limits in State or Federal law, no caps on losses. They are compensated by pain and suffering. There are no caps on punitive damages. These are not pain and suffering damages. These are not compensatory damages. These are punitive damages. These are not pain and suffering damages. There are no caps on losses. They are compensated by pain and suffering. There are no limits in State or Federal law, no caps on losses.

Mr. EDWARDS. I will respond briefly to the Senator from Pennsylvania and the Senator from Louisiana.

First, I suggest to the Senator from Louisiana, when an HMO does something egregious, criminal, to a child, and in my example that child is crippled for life, that crime is not against all of us; it is against that child. It is that child who is in court. It is that child to whom the jury has awarded these damages. They didn’t award it to the person in the hall. They awarded it to that child. When we go in and take 75 percent of that child’s money, it is a tax any way you cut it.

We can talk around this and talk about it for the next 15 minutes or 15 hours. That money does not belong to us. It belongs to that child and that crime was committed against that child and that is whose money we are taking. It is a tax.

Mr. KENNEDY. Mr. President, I yield myself 4½ minutes.

I have listened to my friend from Pennsylvania talk about the uninsured. But where was the Senator from Pennsylvania when President Bush asked for $80 billion to develop a program to cover the uninsured in this country, and they reported back $1.6 trillion and wiped that program out? We could have had a real program for the uninsured, but I didn’t hear the Senator from Pennsylvania talk about that.

I didn’t hear the Senator from Pennsylvania talk about what we were trying to develop the CHIP program; let’s get behind it and fight for that program and take on the tobacco companies. They are the ones that are basically funding the CHIP program now, which has been extended to cover 6 million children in this country. I didn’t hear the Senator from Pennsylvania talking about that.

Where was he last year when we had the family care, $1 trillion and wiped that program out? So with all respect, to offer an amendment to try to help the children of this country with their health insurance has no relevancy in terms of the voracity of the commitment of that side of the aisle in terms of trying to do something for the children of this country.

The record has not been there. To try to offer some amendment this afternoon and cry crocodile tears all over the floor about what we are doing for children when they basically have refused to address this issue in a serious way is something the American people see through.

We understand what is happening, even in this bill where you could have had an important impact in terms of children who are covered. They have been supporting the attempts to water it down in terms of the HMOs.

That has been the record: Opposition to this HMO—the Patients’ Bill of
Rights, to guarantee the children who do have health insurance are going to get protections. And they have been fighting it every step of the way. Then they say: Oh, well, we are really interested in children because we are going to give them this refundable credit on it.

It doesn’t carry any weight. The American people can see through this. Let’s get our business of passing a real Patients’ Bill of Rights and then let’s go out and try to pass a real health insurance bill that will do something about the remainder of the children who need the care and also the parents of those children who need it in long-term family care. Let’s do something to look out after our fellow citizens.

I withhold the remainder of my time.

Mr. SANTORUM. I just want to remind the Senator from Massachusetts that the Smith-Wyden amendment that provided $20 billion for those who do not have health insurance passed and that is now law. It was in the budget. So I have been a supporter of money and a substantial amount of money for those who do not have insurance.

I have sponsored a piece of legislation, that called Fair Care, which provides tax credits for the uninsured at the cost of around $20 billion a year.

So I suggest to the Senator from Massachusetts:

Mr. KENNEDY. Will the Senator yield on my time?

Mr. SANTORUM. One second—I just suggest to the Senator from Massachusetts, to impugn me personally and suggest I am disingenuous by proposing that we provide some money in punitive damages, not damages to compensate for injury but damages to punish someone who did a wrong—why should that go to an individual as opposed to society, which was wronged by that activity, as all criminal activity is. It is a crime against society. We do not compensate, as you know, when we prosecute someone criminally. The individual does not get benefit from that punishment.

So punitive damages are there to punish, not to compensate. I know the Senator from North Carolina knows that. That is why they are called punitive—punish; compensatory—compensate. There is a difference. That language is not there for window dressing; it is there for substantive difference.

What I am suggesting is that these punitive—punish; damages should not further punish people who have insurance because they are the ones ultimately to be punished. Several States have recognized this and have plowed that money back into the system to help those who would otherwise be punished by this money coming out of the system of health insurance.

So I just suggest that my commitment here is sincere and my object here I think is worthy of support. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. First I say to my colleague, we can keep talking about this. The truth of the matter is the criminal conduct we are describing here is committed against a patient; in my example, against that particular child. We are taking 75 percent of that child’s money, any way you cut it. It is a tax. The Government is taking their money, and there is no reason to do that. It makes no sense.

I yield 5 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Senator from North Carolina for yielding 5 minutes.

Let me say I am one of the few Members on the floor of the Senate who thought the Smith-Wyden amendment would pass and that is how the Senator from Massachusetts thinks the amendment would pass. I yield.

Mr. SANTORUM. I withhold the remainder of my time.

Mr. EDWARDS. I withhold the remainder of my time.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I will be happy to work with the Senator from Illinois to tax HMO executives, the executives who get loot out of the health care system. Just as the devil hates holy water, there are those on the other side of the aisle who hate the concepts just as the devil hates holy water. But I will tell you, families across America know they are sensible, sound values and principles. All of this fog and all this smokescreen about taxing punitive damages for the good of America—why aren’t you taxing the executives’ salaries at the health insurance companies who are ripping off people across America? Instead, you are passing tax breaks for those very same people.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I will be happy to work with the Senator from Texas to tax HMO executives, the executives who get loot out of the health care system. Just as the devil hates holy water, there are those on the other side of the aisle who hate the concepts just as the devil hates holy water. But I will tell you, families across America know they are sensible, sound values and principles. All of this fog and all this smokescreen about taxing punitive damages for the good of America—why aren’t you taxing the executives’ salaries at the health insurance companies who are ripping off people across America? Instead, you are passing tax breaks for those very same people.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Listening to all this screaming and hollering, obviously somebody has been stuck by this amendment. What does this amendment do? The bill before us, under the best set of circumstances, is going to cost 1.2 million people in America their health insurance by driving up the cost of health care. And one of the primary factors driving up that cost is litigation.

Now, what the Senator from Pennsylvania has proposed is to take the part of these massive settlements that has nothing to do with compensating the person who has been injured—it has to
Mr. EDWARDS. Mr. President, I have listened to and have engaged many people who will lose their health insurance as a result of all these lawsuits. Are we concerned about people without health insurance or are we concerned about plaintiffs’ lawyers? It seems to me I hear more screaming about plaintiffs’ lawyers than I do health insurance.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SANTORUM. Mr. President, I yield a minute to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I would like to agree with the Senator from Texas. Essentially, with these increased damages from punitive damages, oddly enough, the way insurance works in America, the premium payers are going to pay more. The more big verdicts that are rendered, the more premium payers will pay, raising rates for innocent people who had nothing to do with the conduct that resulted in the punitive damages, resulting in higher costs so more people economically will drop off the insurance rolls.

We have a real problem with the uninsured in America. It seems to me this is a solution that is very creative. It is a solution that has been talked about by legal scholars for some time—what to do with punitive damages. Why, the part of it you pay for pain and suffering, you pay for contract laws—the victims gets that. But what about the money that is to punish the company? Where should it go?

I suggest the Senator is correct; it go to the uninsured and help people be insured.

The PRESIDING OFFICER. The Senator’s time has expired.

Mr. SANTORUM. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two and one-half minutes.

Mr. EDWARDS. Mr. President, I yield 1 minute to the Senator from Connecticut.

Mr. DODD. Mr. President, I thank my colleague for yielding, I see my good friend from Texas. He and I have worked over the years on litigation matters and have authored litigation reform bills and a variety of other measures to reform the legal system.

I think it is important to remember that we have had great debates over the years about victims’ rights and how important it is that victims be remembered when crimes are committed.

It seems to me that on this particular proposal and in this case when a person is subject to criminal conduct—that is what this amounts to—they have been victimized. This is not just compensatory damage for a mistake that is made. If you have been a victim of criminal conduct and are going to be deprived of the award that a jury provides you, that is fundamentally wrong, it ought to be defeated on just that point.

I have listened to and have engaged in debates on victims’ rights. Victims are sick and tired when criminal behavior is committed and they are not considered when the matters have come before the bar of justice. When an individual, a child, or an adult is found to be injured as a result of criminal conduct, that is what punitive damages are. I think they deserve to receive that award.

Mr. EDWARDS. Mr. President, the Senator from Connecticut is exactly right. When we have a victim, such as a child who has been injured by the criminal conduct of an HMO, it is fundamentally wrong to take 75 percent of that child’s money. And that is to whom it belongs. No matter what they say, and no matter how long we talk about it, it belongs to that child. To take 75 percent of that child’s money is wrong, and we should vote against this amendment.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I yield to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I have been listening to this debate, and I think some good points have been made on both sides. But is the standard for recovery of punitive damages in this case criminal conduct, or wanton misconduct, or intentional infliction of distress? I would be surprised if the standard for punitive damages is criminal conduct.

Is that the case?

Mr. SANTORUM. No. If it takes a long time to answer, I am not going to yield the rest of my time to define that answer.

Mr. EDWARDS. If the Senator will yield time to me, I will be happy to answer that question. I can’t answer it yes or no.

The answer is reckless, intentional, outrageous conduct.

Mr. SANTORUM. Which is not criminal.

Mr. EDWARDS. Of course, it is criminal conduct.

Mr. THOMPSON. No, no, no. Reclaiming my time, let’s not gild the lily. I think you have some good points. Let’s not try to convince people that wanton misconduct and willful misconduct is the same as criminal misconduct. It is not.

Mr. SANTORUM. Mr. President, let me reclaim my time. It is quickly running out.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. EDWARDS. Will the Senator yield for a response to that question?

Mr. SANTORUM. Mr. President, I ask unanimous consent for an additional minute to finish this colloquy so it doesn’t impinge on my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EDWARDS. The language of the legislation is that reckless, intentional conduct is criminal conduct—all over America.

Mr. THOMPSON. No. It isn’t. Mr. EDWARDS. I respectfully disagree. Somebody who engages in reckless conduct in the operation of an automobile has engaged in criminal conduct. Somebody who engages in reckless conduct that causes the death involved in that conduct. I respectfully disagree with the Senator.

Mr. THOMPSON. If I could respond, conduct that is subject to civil litigation versus conduct that is subject to criminal litigation, the conduct that the Senator described may, in fact, turn out to be also in addition to having civil exposure having criminal exposure, or it may not. But the conduct very well may be reckless, or even intentional, and constitutes conduct that is subject to punitive damages which can still not be criminal.

My only point is that it is not the same. It is not the same. The same conduct can in some cases be both, but in the same context if.

The PRESIDING OFFICER. The Senator’s time has expired.

Mr. THOMPSON. All right.

The PRESIDING OFFICER. The Senator from Pennsylvania has 1 minute.

Mr. SANTORUM. Mr. President, I reiterate that this amendment is in some cases about taking money. The concern of this bill is that excessive costs will drive up the rates for insurance. We are taking some of this excessive cost that is built into this bill and plowing it back into the system to make sure that we don’t have more uninsured if we don’t take care of it.

I wish to make one additional point. Back in 1992, the House sponsor of the McCain-Kennedy bill, John Dingell, proposed using 50 percent of punitive damage awards to help compensate people—in this case, to prevent medical injuries. This is not a punitive damage measure. This is a measure that understands that punitive damages could go to innocent people who could be hurt by their increased cost of insurance. That is what this amendment does.

I hope we can get some bipartisan support for it.

I ask for the yeas and nays.

The PRESIDING OFFICER. All time has expired.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Hawaii (Mr. INOUYE) is absent on official business.

I further announce that the Senator from Hawaii (Mr. INOUYE) is absent on official business.
I further announce that, if present and voting, the Senator from Hawaii (Mr. INOUYE) would vote “aye.”

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Alaska (Mr. MURkowski) have been absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 46, as follows:  

[Rollcall Vote No. 217 Leg.]

YEAS—50

Akaka
Durbin
Miller
Baucus
Edwards
Murray
Bayh
Feingold
Nelson (FL)
Biden
Feinstein
Reed
Bingaman
Graham
Reid
Boxer
Harkin
Rockefeller
Cantwell
Hollings
Sarbanes
Carnahan
Jeffords
Schumer
Carper
Johnson
Snowe
Cleland
Kennedy
Stevens
Clinton
Kerry
Thune
Conrad
Kohl
Specter
Corzine
Leahy
Stabenow
Daschle
Lieberman
Torricelli
Dayton
McCain
Wells
Dodd
McKeon
Wilkerson
Dorgan
Mikulski
Wyden

NAYS—46

Allard
Ensign
Lugar
Allen
Enzi
McConnell
Bennett
Fitzgerald
McCain
Bond
Frist
Nelson (NE)
Breaux
Gramm
Roberts
Brownback
Grassley
Sanford
Bunning
Gregg
Sessions
Burns
Hagel
Smith (NE)
Byrd
Hatch
Smith (OR)
Campbell
Huntsman
Stevens
Chafee
Hutchinson
Ted Stevens
Cochrane
Hutchison
Thurmond
Collins
Isaak
Thune
Craig
Kyl
Voinovich
Crappo
Landrieu
Warner
DeWine
Lugar

NOT VOTING—4

Domenici
Lincoln
Inouye
Markowski

The motion was agreed to.

Mr. DASCHLE. Mr. President, the distinguished Senator from New Hampshire (Mr. GRAY) has been working with colleagues on his side of the aisle to come up with a finite list. We have an amendment to be offered by Senator CARPER and an amendment to be offered by Senator KENNEDY. These are the only two amendments on our side. I yield the floor for purposes of describing the list on the Republican side.

Mr. GRACY. Mr. President, the list on our side includes the following amendments. If there is somebody else who has an amendment and I have not spoken to them, raise your hand.

The amendments are: Senator CRAIG and an amendment to be offered by Senator KENNEDY. There are pending the only two amendments on our side. I yield the floor for purposes of describing the list on the Republican side.

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Mr. THOMPSON. No.
threaten to fragment us as a people. Each year on the glorious Fourth of July we are given a chance to come together proudly as one American people, to honor, in Jefferson’s words, “[T]he wisdom of our sages and the blood of our braves, that have been devoted to the principles embodied in our Constitution and our government.

This next Wednesday evening, as fireworks thunder over the Jefferson Memorial in Washington and are mirrored in the reflecting pond around it, patriotic music will fill the air. Similar scenes will play out around the country. Whether in Washington or in small towns or medium-sized cities around the Nation, or in large cities, we may all be proud to be Americans first and foremost. Whatever other allegiances we might have, to party, church, state, or community, we are Americans first. Let us celebrate that and let us not forget it.

As you light your sparklers and fountains, as you hear the martial music of John Philip Sousa, as you applaud the fireworks displays, as you eat the first sweet corn and tomatoes from the garden, look around you and feel proud. Be proud that 225 years ago, bold men risked their lives and their fortune and their sacred honor to give us this wonderful system of States, this amazing governmental system, this land of the free, this home of the brave united as one nation under God and under the red, white, and blue flag of the United States of America. Feel glad that so many of your fellow citizens are standing at your shoulders watching the parade, or sitting nearby with their families looking up at the sky ablaze with man-made stars. In these crowds is our hope for a long future as a people united still under Old Glory, and under the Constitution of the United States.

Mr. President, Thomas Jefferson spoke of our constitutional government as the “sheet anchor” of our peace, our prosperity, and our safety. It is a sheet anchor, according to the Merriam-Webster Dictionary, a noun that first appeared in the 15th Century. It is a large, strong anchor formerly carried in the waist of a ship and used as a spare in an emergency, but the phrase has also come to be used for something that constitutes a main support or dependence, especially in times of danger. Truly, then, in Jefferson’s words, “[T]he wisdom of our sages and the blood of our braves, that have been devoted to the principles embodied in our Constitution and our government. It is fitting, then, to close with the words of the President, to honor, in Jefferson’s words, ‘[T]he wisdom of our sages and the blood of our braves, that have been devoted to the principles embodied in our Constitution and our government.’

...
Mr. DASCHLE. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate is not in order. The Senate will suspend. Please take your conversations off the floor.

Mr. WARNER. Mr. President, I wish to accommodate the managers, but I am ready to proceed. I think I can describe my amendment in about 10 or 15 minutes or less. I urge colleagues to accept that offer to move ahead and give equal time to each side.

Mr. WARNER. Mr. President, I say to my friend, the distinguished Senator from Virginia, we have had trouble hearing over here.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Virginia is entitled to be heard.

The Senator from Virginia.

Mr. WARNER. Mr. President, I say to my good friend, the distinguished majority whip, I am seeking now to address my amendment. It has been pending for some time, and I am perfectly willing to enter into a time agreement. I need but, say, 15 minutes.

Mr. REID. Say 30 minutes evenly divided?

Mr. WARNER. I am quite agreeable to 30 minutes equally divided.

Mr. REID. Our anticipation now—we will work this out, speaking with the managers of the bill—is to offer side by side with yours, or second degree, whatever your manager wishes to do, but you should go ahead and proceed. We are available during our 15 minutes to respond.

Mr. WARNER. Mr. President, might I have clarification? If I understand it on the second-degree, in the event it seems we need some adjustment in the time agreement with which to address that—

Mr. REID. Why not take an hour evenly divided, and if we don’t need it, we will yield back the time?

Mr. DASCHLE. Mr. President, I am not sure what the Senator from Virginia wishes to do. I hope they will not second degree your amendment but, rather, offer an amendment which would be a stand-alone, side-by-side amendment.

Mr. REID. I am sorry, did you say you wanted to offer it side by side? That is what we want to do.

Mr. WARNER. That is perfectly agreeable. Could my amendment be voted on first?

Mr. REID. Of course—well, let me not get my mouth ahead of my head.

In the past what we have done, Mr. President, is the second-degree amendment could be a second-degree amendment that appears to be the one we would ordinarily vote on first. Through all these proceedings, the stand-alone was the one we would vote on first. In other words, that could have been a second-degree. That is what we have done in the past.

Mr. GREGG. Mr. President, we did reverse the order on the Snowe—

Mr. REID. It is not important whether it is first or second. Do you agree?

Mr. EDWARDS. We should go first.

Mr. REID. Through these entire proceedings—I don’t know how many votes it has been now, but certainly it is lots of them—the one that would have been the second-degree should be voted on first. We think we should do it in this instance. Nickles, liability; Bond, punitive; Thompson, regarding point of order; Kennedy, two relevant; Daschle, two relevant; Carper, relevant, to be offered and withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Reserving the right to object, I ask if the majority leader would be willing to adjust his unanimous consent so Senator Ensign could modify his amendment, which is pending, and also, because we have not seen the Kennedy, Daschle, or Carper amendments, we would want to reserve the right to have a second-degree amendment.

Mr. DASCHLE. The amendments are subject to second degrees, of course. I ask unanimous consent that the Ensign amendment be allowed to be modified.

Mr. CRAIG. Reserving the right to object.

Mr. GREGG. Reserving the right to object.

Mr. THOMPSON. Reserving the right to object, a simple point: My amendment was listed as one having to do with a point of order. If we could correct that, it actually has to do with venue.

Mr. DASCHLE. I ask consent the clarification be made with regard to the Thompson amendment.

Mr. GREGG. I also ask that the Nickles amendment be defined as relevant, rather than liability, and, since the majority leader has asked to reserve two relevant amendments, the Republican leader is given two relevant amendments.

The PRESIDING OFFICER. Does the majority leader modify the request?

Mr. DASCHLE. I also ask that the Nickles amendment be defined as relevant, rather than liability, and, since the majority leader has asked to reserve two relevant amendments, the Republican leader is given two relevant amendments.

The PRESIDING OFFICER. The request is modified.

The Senator from Idaho.

Mr. CRAIG. Mr. President, may I inquire of the majority leader, is it your intent to at least shape the field of amendments into a set number but there is no time tied to those? Is that correct?

Mr. DASCHLE. That is correct.

Mr. CRAIG. Thank you.

The PRESIDING OFFICER. There is no objection to the request. Without objection, it is so ordered.

Mr. DASCHLE. I thank our colleagues.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, if I may just proceed, my understanding is that we have 30 minutes equally divided under the time agreement. Is that correct?

The PRESIDING OFFICER. That has not been propounded.

Mr. WARNER. Mr. President, I suggest we just leave it open. I want to

The bill be read a third time and a vote on final passage of the bill occur without any intervening action or debate: Frist substitute; Frist, liability; Craig, long-term care; Craig, nuclear medicine; Kyl, alternative insurance; Santorum, unions; Nickles, liability; Bond, punitive; Thompson, regarding point of order; Kennedy, two relevant; Daschle, two relevant; Carper, relevant, to be offered and withdrawn.
give adequate opportunity to those who wish to address this subject. I will proceed.

Mr. President, for some time I have followed this bill very carefully. I am, of course, quite aware of the name of it—the Bill of Rights. I would like to ask the Senate to give serious consideration to protecting the right of a patient to receive what I regard as a fair return on such awards as a court may approve, presumably, by a jury recognizing the plaintiff’s case has merits and the award in question is just.

The McCain-Kennedy-Edwards bill provides new rights. But there is nothing in there to give the patients the protection from what could well be perceived by many as an unfair allocation of that award between attorneys and patients. Therefore, I think there should be a framework of caps on the maximum amount of the award to be made. May I explain it.

It is a kind of complicated because we have a Federal court and a State court. While I don’t know the ultimate finality of this legislation, at this point the amendment provides for the treatment of caps in both courts, and they are somewhat different.

In addition, I believe very strongly that there is in rare instances and under extraordinary circumstances a case where an attorney would be entitled to in excess of the one-third cap that I am proposing in both Federal and State courts. An allowance has to be made for the exceptional type of case.

I am proposing a framework of caps. It would be giving the court the right to only approve attorney’s fees in a case up to one-third of the award of the damages. It could well be that the client may have struck an arrangement with his attorney for less than one-third. It recognizes that situation.

Having the one-third cap strengthens the ability of the patient—the client—to get a fee structure which is consistent with their receiving the majority of the ultimate one-third as the basic structure in both the Federal and the State court.

In addition, in both Federal and State court, we have exceptions in rare cases, and extraordinary facts, where the judge can go above the one-third with no cap.

We have proposed confidence in our judiciary system. Indeed, we have proposed confidence in those members of the bar. Many years ago, I was privileged to be an active practitioner before the bar and had extensive trial experience as assistant U.S. attorney and some modest trial experience in other areas.

I recognize that the vast majority of the bar will work out a fee schedule with their client in such a way that there will be an equitable distribution. But there are instances where the patient could well be deserving of the award by the court and then prohibited from getting what I perceive as a fair and proportionate share by someone who does not follow the norm.

The norm in most cases does not exceed one-third. Contingent fees are usually one-third or less. Therefore, we put in the cap of the one-third.

I think it is clear that there is a good deal of expense to a lawyer associated with representing a client. They pass it on to the client, of course, but that expense is over and above the fees. If it is a 2-week trial with a lot of expenses associated with it, it looks a lot like the one-third allocation. It is over and above, and again subject to the court’s discretion.

We lay out a formula for the Federal courts under the lodestar method. That is a formula that was approved by the Supreme Court of the United States as it relates to attorney fees in Federal cases.

Here are basically the factors the court would review in the Federal system: The time and effort required by the attorney; the difficulty of the questions involved; the skill requisite to perform the legal services; or the preclusion of employment of the attorney due to acceptance of the case. In other words, it is giving up other opportunities to take on this case.

What are the customary fees that are before the courts and the bar in the jurisdiction that the case is held? Whether the fee is fixed or contingent; time limited measure to be imposed by the client on the circumstances; the amount involved in the return of the jury in most instances; the experience and reputation and the ability of the particular attorney, and on it goes. But it is carefully worked out through many years of following these cases.

Therefore, I believe that we are giving protection to the patient. For rare and extraordinary cases, the court can go above it. In some instances, the bar, or the court, or the third is not appropriate, and that it should be some fee less than a third, again protecting the interests of the patient.

I find this a very reasonable amendment. It certainly comports with the basic objectives of this law; namely, to protect the interests of the patient. For rare and proportionate share by someone who does not follow the norm.

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I find this a very reasonable amendment. It certainly comports with the basic objectives of this law; namely, to give some benefits to those who have suffered the grievances which are designated in this law.

I also recognize the Federal-State law; that is, what we call States rights. I have been a strong proponent of that throughout my career in the Senate.

I provide that in the case of a State court, if the State in which that court sits has a framework of laws which govern attorney fees, then this amendment does not apply.

I request that the State law would govern the return to the attorney of that amount to which he or she is entitled for their services—not this proposed amendment.

Mr. President, I see my colleague in the Chamber.

I yield the floor for the moment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. Reid. Mr. President, I have a unanimous consent request I am going to propose in just a minute—or in even less than a minute.

Senator Greggs is in the Chamber, and I appreciate his listening, and, Mr. President, I ask unanimous consent that I be recognized to offer an additional first-degree amendment, with 30 minutes for debate in relation to the Warner amendment and the Reid amendment to run concurrently prior to a vote in relation to the Warner amendment—which the Senator from Virginia indicated he wanted first—followed by a vote in relation to the Reid amendment, with no second-degree amendments in order prior to the votes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 852

Mr. Reid. Mr. President, Senator Warner and I have worked side by side on this proposal. So I have a Senate subcommittee chairman; he has been my subcommittee chairman. Twice I have been chairman of the full committee. I have been the ranking member of that committee.

There is no one I have worked with in the Senate who is more of a gentleman than the Senator from the Commonwealth of Virginia, Mr. Warner, He has always been the ranking member of the Subcommittee on the Environment and Public Works Committee. I have been his subcommittee chairman; he has been my subcommittee chairman. Twice I have been chairman of the full committee. I have been the ranking member of that committee.

In other words, he is giving up other opportunities to take on this case.

What are the customary fees that are before the courts and the bar in the jurisdiction that the case is held? Whether the fee is fixed or contingent; time limited measure to be imposed by the client on the circumstances; the amount involved in the return of the jury in most instances; the experience and reputation and the ability of the particular attorney, and on it goes. But it is carefully worked out through many years of following these cases.

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Mr. President, I see my colleague in the Chamber.

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The PRESIDING OFFICER. The Senator from Nevada.
Senator WARNER's proposal, it is something, and we will figure it out later based on how many hours, and where you did it, and what kind of case it was. Ours is simple, direct, and to the point. It would only complicate things to support the amendment of my friend from Virginia.

Mr. President, at this time, after explaining my amendment, I call my amendment forward and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk reads as follows:

The Senator from Nebraska [Mr. Reid] proposes an amendment numbered 852.

Mr. REID. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To limit the amount of attorneys' fees in a cause of action brought under this Act)

On page 154, between lines 2 and 3, insert the following:

''(11) LIMITATION ON AWARD OF ATTORNEYS' FEES.—''

(A) IN GENERAL.—Subject to subparagraph (B), with respect to a participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under subparagraph (A) to the amount of attorneys' fees that may be incurred for the representation of a participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under paragraph (1) may award a court any amount equal to 1/5 of the amount of the recovery.

(B) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of an award of attorneys' fees required under subparagraph (A) as equity and the interests of justice may require.

On page 170, between lines 21 and 22, insert the following:

''(9) LIMITATION ON ATTORNEYS' FEES.—''

(A) IN GENERAL.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys' contingency fees, subject to subparagraph (B), a court shall limit the amount of attorneys' fees that may be incurred for the representation of a participant or beneficiary (or the estate of such participant or beneficiary) who brings a cause of action under paragraph (1) to the amount of attorneys' fees that may be awarded under section 502(n)(1).

(B) EQUITABLE DISCRETION.—A court in its discretion may adjust the amount of attorneys' fees allowed under subparagraph (A) as equity and the interests of justice may require.

Mr. REID. Mr. President and Members of the Senate, the language in this amendment was not made up in some back room by my staff or somebody from downtown. It was taken—every word of it—directly from the amendment originally offered by the Senator from Virginia—exactly identical, not a word changed.

Certain paragraphs were taken out of this amendment. It is far too complicated. But every word in my amendment is directly from the amendment offered by the Senator from Virginia. I ask Senators to support my amendment, what should be a bipartisan amendment.

There are some people who want no restrictions. We have acknowledged that we are going to, in this instance, have a restriction. If there is going to be one here direct and to the point, as this one is.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, I yield what time the Senator from Delaware wants.

Mr. BIDEN. Five minutes.

Mr. REID. Five minutes.

Mr. WARNER. Mr. President, for clarification, are we under a time agreement?

Mr. REID. Yes, we are.

Mr. WARNER. Was that in the unanimous consent agreement?

Mr. REID. Yes. But I say to the Senator, whatever time you need we can yield to you.

Mr. WARNER. Fine.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I always find these debates about attorney's fees fascinating. You find both sides of the aisle who usually are seeking to restrict attorney's fees are the most big-time free enterprise guys in the world. They are people who tell us we should not freeze and/or put limitations on the amount of money energy companies can make, even though it bears no relationship to cost. They are folks who tell us that in California—when you have utility companies gouging the public—that we should not, even though we have authority under Federal law, put on some limitations. They are folks who tell us that, notwithstanding the fact that a drug company may be able to manufacture a pill for one-quarter of 1 cent and sell it for $75, there should not be any relationship between the amount of cost involved and the profit made.

I find it absolutely fascinating. For example—I am not going to do it—a great amendment to the amendment by my friend from Virginia would be the following: That any fee charged by an HMO for health care coverage must bear direct relationship to their cost and cannot exceed a profit rate of X amount. That would be fair, right?

All these folks who can't afford health insurance, who are getting bashed around and battered, we are trying to help, but I imagine I would not get many votes for that. I bet my friend from Virginia would not vote for that because that is free enterprise.

My grandfather Finnegan used to have an expression. He said: You know, it's kind of fascinating. There's free enterprise for some people, free enterprise for the poor, and socialism for the rich. You find yourself in a position where, if you are representing the right interests, you have a 60-percent chance of winning this case. I'll tell you what I will do. I am going to front all the expenses. I am going to take all the chances.

It is sort of free enterprise. It may cost me the first $50,000, $50,000, $5,000, $50,000, $100,000, and then I am the deep-pocket company and I want to run you out, all I do is I keep deposing you; I keep submitting interrogatories; and I run your cost up because you have to pay for that.

I guess the only point I am trying to make—is and I don't want to take the time because I am sure everybody's mind is already made up on this thing—if you feel good about lawyer bashing, you feel good about making the American taxpayer pay for that.

I don't know what is good for the goose isn't good for the gander. If we do this with regard to attorney's fees and we don't do this with regard to health care costs and fees, what is the fundamental difference? Tell me the fundamental difference, all of a sudden, in the great interest of my friends to protect the poor, aggrieved plaintiff, in the great interest of my friends to protect the poor, aggrieved plaintiff. You find yourself in a position—well, I will yield to you.

Mr. BIDEN. Five minutes.

But I don't know; what is good for the goose isn't good for the gander. If we do this with regard to attorney's fees and we don't do this with regard to health care costs and fees, what is the fundamental difference?
The first thing I did under my amendment was say, if there is a body of State law, then my amendment doesn’t apply to those decisions in State courts. So I think there is some dozen or so that have a statutory framework for the regulation of attorney’s fees. That framework has been taken away from them. We want to reestablish something that is kind of old-fashioned in the minds of many—that is, when you go see your doctor, the doctor determines what kind of medical treatment you need, and what kind of care you need. That is what this legislation is all about. It is not about attorney’s fees.

If the people on the other side were interested in saving money, one of the amendments they should have would address the compensation of some of these employees. There is a list, and you can go to the top 10. The first one, including stock options, made $411,956,000 last year. That is just a little bit to be concerned about as little bit. We have a lot of money that isn’t necessarily needed.

This is not about how much money people make. What it is about is trying to pass a Patients’ Bill of Rights. I ask that we move forward as quickly as possible and vote and get on with the rest of the legislation.

The PRESIDING OFFICER. Who yields time?

Mr. REID. The Senator from Tennessee has some of mine.

Mr. THOMPSON. A couple of minutes, if I may, Mr. President.

I have been listening to the debate. We are making it much more complicated than it needs to be. We are talking about whether or not this is a good idea. The sponsors of these two amendments always come forth with good ideas. I will not debate that these amendments always come forth with good ideas.

If I am incorrect about that or there is some lawyer who is not thinking about attorney’s fees, I will stand corrected. That is a concern of mine.

I yield the floor.

Mr. WARNER. Mr. President, if I could reply to my distinguished colleague’s question, I entertain because I take pride in my record of some 23 years in this body to protect State laws.
framework of law regarding the award of attorney’s fees, this does not apply. I think it is important that we honor those States that have a framework and laws which set attorney’s fees, which is in my amendment. I am just trying to help you improve yours so that you prevail.

Mr. REID. Well, I guess there is some reason that could be done. That is only going to complicate what we have. We are trying to give as much discretion as possible to State judges. I think they need that. I think one of the problems that I have with the Senator’s original amendment is it takes away from State law, from what States can do. It seems interesting to me that we are so in tune with States rights around here all the time, unless it comes to something dealing with injured parties—whether it is product liability cases or whatever. We suddenly want to take away what the States have done in all these decades. I think my friend’s amendment takes away a lot of what we have with our States.

Mr. WARNER. Mr. President, I will read to my friend section (E) of my amendment, please.

NO PREEMPTION OF STATE LAW—Subparagraph (A) shall not apply with respect to a cause of action under paragraph (1) that is brought in a State that has a law or framework of laws with respect to the amount of an attorney’s contingency fee that may be incurred for the representation of a plaintiff as provided by law.

And so forth. In other words, if the State has a framework of State laws, we in the Congress should not be trying to amend them, as I fear you are doing through an omission in yours. I have protected it in mine.

Mr. REID. Well, I understand what the Senator’s intent is. When you are looking for intent, you want to be as precise and direct as possible. I respectfully say we should get on with the vote. I think we have said everything. I am not sure everyone has said it. You and I have.

Mr. WARNER. Let me point out one other thing. Again, there is a difference as to how these things are treated under Federal and State. As I said, ERISA gives certain protections that are involved in the Federal court. There Federal law requires relief grievance under ERISA and that is not found in my friend’s amendment. You say it is implicit in every court in the land; it is not needed to be expressed. Is that your point?

Mr. REID. The reason we took your basic amendment and made it directly to the point as to the one-third is it becomes too complicated for a court to determine attorney’s fees based on the complicated program you have set up. Ours is simple and direct. In rare instances, a judge can step in and raise them or lower them.

Mr. WARNER. I wanted to make sure they would go to my view. That is my view. We have a difference of opinion on that.

Mr. President, I will soon suggest the absence of a quorum so I have some period of time to reflect on perhaps other suggestions I might have. I am willing to allow these amendments to be laid aside if the Senator would agree to proceed with others.

Mr. REID. We have been laying aside things so long—

Mr. WARNER. If that is of no help, we need not do that.

Mr. REID. I have no problem having a quorum call and we can talk. I really think we have to move on. I am willing to take my chances, whatever they might be. You might be waiting around to offer amendments. We should move on if we can.

Mr. THOMPSON. Mr. President, I am prepared to move forward with an amendment, if that is desired by my two colleagues, while you have your discussions. If you want to go into a quorum call, we will wait.

Mr. REID. I would be happy to set these two amendments aside and let my friend from Tennessee, who offered probably the most interesting attorney’s fees today—No. 1, he was concise and to the point. I think probably both of these are unconstitutional. I am willing to go forward.

I ask unanimous consent that the two amendments by Senators Reid and Warner be set aside and that the Senator from Tennessee be allowed to call up an amendment. The Senator’s amendment is on the improved list, correct?

Mr. THOMPSON. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendments are laid aside.

The Senator from Tennessee is recognized.

AMENDMENT NO. 853

(Purpose: To clarify the law which applies in a State cause of action)

Mr. THOMPSON. I send to the desk an amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. THOMPSON] proposes an amendment numbered 853. On page 170, between lines 21 and 22, insert the following:

"(9) CHOICE OF LAW.—A cause of action brought under paragraph (1) shall be governed by the law (including choice of law rules) of the State in which the plaintiff resides."

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I let the amendment be read because it is probably the shortest amendment that will be considered tonight. It is very simple and straightforward. Basically, what it says is that in these lawsuits that we are dealing with, we apply the law of the State of residence and citizenship of the plaintiff in this case.

Let’s go back just a bit and understand the lawsuit scheme that we have created by this litigation. We have created a Federal cause for matters that are essentially contract; and we have created a State cause of action in State court for matters that have to do with medically reviewable situations.

What that has left us with is the ability of a claimant to bring a State court claim in any State where the defendant is doing business. If you have a medical claim and the insurance company is doing business in several States, even though you live in Tennessee, you could bring your lawsuit in any number of States where that insurer is doing business. That is simply known as forum shopping. This, reason people say, because different States have different laws in terms of limitations on recovery. They have different rules of evidence. Some allow punitive damages—most do. Some cap those punitive damages. Some don’t allow punitive damages at all. So I don’t believe we want to create a situation where if we are going to have this liberal litigation scheme that we have set up, that we allow it to occur anywhere in the country, which might be the case with regard to some big defendant.

Now, employers in some cases are going to be defendants also, I believe it is quite clear. You not only have the insurance companies, but you also have the employers to look at and to see whether or not the business is in these various States and, if they are, then you could bring your lawsuit in any of those States in which they are doing business. I don’t think that serves the purposes that we are trying to serve with this legislation.

Therefore, we have the authority, and I think it would be a wise exercise of our authority and discretion, to limit those lawsuits. If you are from the State of Tennessee and you have a legitimate claim and you want to bring a lawsuit, you ought to be bound by the law in the State from which you come. You should not be able to forum shop.

Now, there might be some Federal causes of action that are also of the medically reviewable type. We have been talking in this debate for several days about State causes of action, but what we are really dealing with is the laws of those States. They are causes of action based on the laws of individual States. So if a person wants to bring his lawsuit, he can still bring it in Massachusetts if he lives in Tennessee, but he is bound by the law of Tennessee.

If there is a diversity situation in Federal court, where the Federal court has jurisdiction and you have a doing-business requirement satisfied as far as the corporate defendant is concerned, for example, you have diversity, you still are bound by the law of your home State. So that would prevent forum shopping.

I believe this is desirable. I heard several expressions of agreement with the proposition we did not want to create a system of forum shopping in this litigation. We are going to have this law applied in all 50 States. There will be lawsuits produced in all 50 States, and all 50 States have laws that will be applicable in the suits wherever they are located.
brought. A citizen ought to be bound by the laws of his or her State and not be able to shop all over the country for a potentially better situation than what they have in their State. It is a State cause of action. They should be bound by the laws of their home State. That is a fact. I hope my colleagues will see the wisdom of it and will reach agreement on it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to my friend from Tennessee, his argument is persuasive enough that all the managers on our side left the floor, so I suggest the absence of a quorum.

Mr. AKAKA. Mr. President, I ask unanimous consent that I may be permitted to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I ask unanimous consent that I may be permitted to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. KENNEDY. Mr. President, I express great appreciation also for the Senator’s strong support for our Patients’ Bill of Rights. This has been an issue in which he has taken a great personal interest. He has been one of the strong supporters of this legislation for many, many years. Although he has not been a member of our committee, this is a matter I know he cares deeply about. He has been a strong supporter of all the amendments that have protected patients, and I don’t think there has been a member who has been a stronger advocate for the patients and their rights than our good friend, the Senator from Hawaii. I thank him very much for his statement and all the work he has done to help bring the bill to where it is.

Mr. GREGG. Mr. President, I understand the Senator from Nevada will modify his amendment and we will have a voice vote, and the Senator from Tennessee will have an amendment agreed to, also. Hopefully, we can dispose of those two amendments right now.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 489, AS MODIFIED

Mr. ENSIGN. Mr. President, I call up amendment No. 489 and I send a modification to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The amendment will be so modified.

The amendment (No. 489), as modified, is as follows:

Subtitle C of title I is amended by adding at the end the following:

SEC. 122. GENETIC INFORMATION.

(a) DEFINITIONS.—In this section:

(1) FAMILY MEMBER.—The term “family member” means with respect to an individual—

(A) the spouse of the individual;

(B) a dependent child of the individual, including a full, half, or step child or placed for adoption with the individual; and

(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

(2) GENETIC INFORMATION.—The term “genetic information” means information about genes, gene products, or inherited characteristics that may indicate the presence of a disease or disorder in an individual or a family member of such individual (including information about a request for or the receipt of genetic services by such individual or a family member of such individual).

(3) GENETIC SERVICES.—The term “genetic services” means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.

(4) GENETIC TEST.—The term “genetic test” means the analysis of human DNA, RNA, chromosomes, proteins, and certain metabolites, including analysis of genotypes, phenotypes, or inherited characteristics that may indicate the presence of a disease or disorder in an individual or a family member of such individual.

(B) the procedures established by the plan or issuer offering health insurance coverage, that provides health care items and services to an individual or dependent may request (but may not require) that such individual or dependent disclose, or authorize the collection or disclosure of, predictive genetic information for purposes of diagnosis, treatment, or payment relating to the provision of health care items and services to such individual or dependent.

(B) NOTICE OF CONFIDENTIALITY PRACTICES AND DESCRIPTION OF SAFEGUARDS.—A group health plan, or a health insurance issuer offering health insurance coverage, shall post or provide, in writing and in a clear and conspicuous manner, notice of the plan or issuer’s confidentiality practices, that shall include—

(A) a description of an individual’s rights with respect to predictive genetic information;

(B) the procedures established by the plan or issuer for the exercise of the individual’s rights; and

(C) a description of the right of the right to obtain a copy of the notice of the confidentiality practices required under this subsection.

(2) ESTABLISHMENT OF SAFEGUARDS.—A group health plan, or a health insurance issuer offering health insurance coverage, shall establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality, security, accuracy, and integrity of predictive genetic information created, received, obtained, maintained, used, transmitted, or disclosed by such plan or issuer.

(3) COMPLIANCE WITH CERTAIN STANDARDS.—With respect to the establishment and maintenance of safeguards under this subsection, a group health plan, or a health insurance issuer offering health insurance coverage, shall be deemed to be in compliance with such subsections if such plan or issuer is in compliance with the standards promulgated by the Secretary of Health and Human Services under—

(A) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

(b) section 239(c) of Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note).

(c) COLLECTION OF PREDICTIVE GENETIC INFORMATION.—With respect to health insurance coverage offered by a health insurance issuer, the provisions of this section relating to the receipt of genetic information about a request for or the receipt of genetic services by such individual or a family member of such individual.

(d) CONFIDENTIALITY WITH RESPECT TO PREDICTIVE GENETIC INFORMATION.—

(1) NOTICE OF CONFIDENTIALITY PRACTICES.—A group health plan, or a health insurance issuer offering health insurance coverage, shall not request or require predictive genetic information about an individual or family member of the individual (including information about a request for or the receipt of genetic services by such individual or a family member of such individual).

(2) INFORMATION NEEDED FOR DIAGNOSIS, TREATMENT, OR PAYMENT.—

(A) IN GENERAL.—Notwithstanding paragraph (a), a group health plan, or a health insurance issuer offering health insurance coverage, shall provide to the individual or dependents a description of the procedures in place to safeguard the confidentiality, as described in subsection (d), of such predictive genetic information.

(3) COMPLIANCE WITH CERTAIN STANDARDS.—With respect to the establishment and maintenance of safeguards under this subsection, a group health plan, or a health insurance issuer offering health insurance coverage, shall be deemed to be in compliance with such subsections if such plan or issuer is in compliance with the standards promulgated by the Secretary of Health and Human Services under—

(A) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

(b) section 239(c) of Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note).
member of such individual) shall not be con- 

strued to supersede any provision of State 

law that establishes, implements, or con- 

tinues in effect a standard, requirement, or 

remedy that is more comprehen- 

sively protective than this section.

(1) protects the confidentiality of genetic information (including information about a request for or the receipt of genetic services by an individual or the privacy of an individual or a family member of the individual with respect to genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual)); or  

(2) prohibits discrimination on the basis of genetic information than does this section.

At the end of title II, insert the following:

SEC. 203. ELIMINATION OF OPTION OF NON-FED- 
ERAL GOVERNMENTAL PLANS TO BE 

EXCEPTED FROM REQUIREMENTS 
CONCERNING GENETIC INFOR- 

MATION.

Section 2721(b)(2) of the Public Health Service Act (42 U.S.C. 300gg-21(b)(2)) is amended— 

(1) in subparagraph (A), by striking “If the plan sponsor” and inserting “Except as pro- 

vided in subparagraph (D), if the plan spon- 
sor”; and  

(2) by adding at the end the following: 

“(D) NON-APPLICABLE TO REQUIRE- 
MENTS CONCERNING GENETIC INFOR-

MATION.—The election described in subparagraph (A) shall not be available with respect to the provisions of sections (b), (c), and (d) of section 122 of the Bipartisan Patient Protec-

tion Act and the provisions of section 2702(b) 

to the extent that the subsections and section apply to genetic information (or informa-

tion about a request for or the receipt of genetic services by an individual or a family member of such individual).”.

Mr. ENSIGN. I ask that the yeas and nays be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENSIGN. Mr. President, I under- 

stand both sides have agreed to this amend-

ment. It has to do with genetic testing. We debated it last night. I ap- 

creciate Senators KENNEDY, GREGG, 

and McCAIN working together, along with the White House, to make sure we are not discriminating against people based on genetics; that people with the breast or colon cancer gene, or whatever gene they may have been born with, will not be discrimi-

nated against in the future. I ap- 

creciate everybody working with us on 

this matter.

Mr. KENNEDY. Mr. President, we are 

prepared to accept this amendment.

The PRESIDING OFFICER. The 

question is on agreeing to the amend-

ment.

The amendment (No. 849), as modi-

fied, was agreed to.

Mr. KENNEDY. I move to reconsider 

the vote by which the amendment was 

agreed to.

Mr. GREGG. I move to lay that mo-

tion on the table.

The motion to lay on the table was 

agreed to.

AMENDMENT NO. 833

The PRESIDING OFFICER. The Sen-

ator from Tennessee.

Mr. THOMPSON. I believe I am cor- 

rect in saying my amendment has been 

accepted and it is agreeable to have a 

voice vote.

Mr. KENNEDY. The Senator is cor- 

rect.

The PRESIDING OFFICER. The qu- 

estion is on agreeing to the Thomp-

son amendment, No. 833.

The amendment (No. 833) was agreed to.

Mr. KENNEDY. Mr. President, I suggest-

the absence of a quorum.

The PRESIDING OFFICER. The 

clerk will call the roll.

The legislative clerk proceeded to 

call the roll.

Mr. REID. My President, I ask unan-

imous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without 

objection, it is so ordered.

AMENDMENT NO. 833, AS FURTHER MODIFIED 

Mr. REID. Mr. President, I ask that 

the amendment of the Senator from Virginia be called up, the yeas and nays be withdrawn, and it be agreed to by 

voice vote.

Mr. WARNER. Reserving the right to 

object, should we lay out a full un-

derstanding of our agreement?

Mr. REID. I think we should just 

vote.

Mr. WARNER. Your amendment is 

withdrawn?

Mr. REID. Yes.

Mr. WARNER. I send a modification to 

the desk.

Mr. REID. This is the Warner substi-

tute.

Mr. WARNER. Mr. President, my 

modification has been sent to the desk.

The PRESIDING OFFICER. The 

amendment as modified.

The amendment (No. 833), as further 

modified, is as follows: 

(Purpose: To limit the amount of attorneys’ fees in a cause of action brought under this Act)

On page 154, between lines 2 and 3, insert the following:

(11) LIMITATION ON ATTORNEYS’ FEES.— 

(A) IN GENERAL.—Notwithstanding any 

other provision of law, or any arrangement, 

agreement, or contract regarding an attor-

ney’s fee, the amount of an attorney’s con-

tingency fee allowable for a cause of action 

brought pursuant to this subsection shall not exceed 1⁄3 of the total amount of the plain-

tiff’s recovery (not including the reimburse-

ment of actual out-of-pocket expenses of the attorney).

(B) DETERMINATION BY COURT.—The last 

Federal district court in which the action 

was pending upon the final disposition, 

including all appeals, of the action shall have jurisdiction to review the attorney’s fee to ensure that the fee is a reasonable one.

The motion to lay on the table was 

agreed to.

AMENDMENT NO. 853

The PRESIDING OFFICER. The Sen-

ator from Nevada.

Mr. GREGG. As I understand it, we 

are down to two amendments on our 

side: Senator KYL’s and Senator Frist’s, which will be the substitute.

I hope we can get a time agreement 

on Senator KYL. How much time does the Senator need? He does not know. 

And Senator CARPER, on the other side, is going to make a statement and 

maybe offer an amendment.

I believe if they go, six people are a lit-

tle confused, so they can get ready, we 

are heading toward the finish line. Be-

fore we get to the finish line, I want to 

mention that a lot of people do a lot of 

work around here. They are called the 

staff. They are extraordinary. I espe-

cially want to thank my staff, Senator 

KENNEDY’s staff, Senator KRIST’s staff, 

and the Senator need? He does not know. 

And Senator CARPER, on the other side, is going to make a statement and 

maybe offer an amendment.

Now I suspect the Senator from Ari-

zona is probably ready.

The PRESIDING OFFICER. The Sen-

ator from Arizona.

Mr. REID. If I may say to my friend 

from Arizona, we have not seen his amendment. If we could see it? I won-

der if, in the meantime, we could have
the Senator from Delaware make a statement.

Mr. KYL. Might the Senator from Nevada yield? I have given a copy both to Senator MCCAIN and also to Senator GREGG to give to you. I am sorry if you do not have it yet. Maybe Senator KENNEDY can tell me where we are.

Mr. KENNEDY. I just received this a minute ago. I am just reviewing it. We will be prepared to go ahead in a few moments. I know the Senator from Delaware has waited. I understand it is a short statement. Then I hope we go to the amendment and we will be prepared to enter a short time agreement or whatever limitation to which the Senator from Arizona will be agreeable.

Mr. REID. I ask the Senator from Delaware, through the Chair, how much time he wishes to take.

Mr. CARPER. No more than 15 minutes.

Mr. REID. The Senator from Delaware wishes to speak for up to 15 minutes. I ask unanimous consent he speak at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Delaware.

AMENDMENT NO. 855

Mr. CARPER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The legislative clerk read as follows:

The Senator from Delaware [Mr. CARPER] proposes an amendment numbered 855.

Mr. CARPER. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To disallow punitive damages)

On page 153, strike line 9 and all that follows through page 154, line 2, and insert the following:

(10) STATUTORY DAMAGES.—The remedies set forth in this subsection shall be the exclusive remedies for any cause of action brought under this subsection. Such remedies shall include economic and noneconomic damages, but shall not include any punitive damages.

Mr. CARPER. Mr. President, the amendment before us, which I will ask to be withdrawn in a few moments, is one Senator LANDRIEU and I offer, and I know has the support of a number of Members from both sides of the aisle.

A great deal of effort has gone into crafting a compromise with respect to the appropriate venue, Federal or State, for bringing litigation in cases where an HMO has acted inappropriately.

As I have studied this issue over the last week or so, the way the underlying bill assigns venue for State action and for action that is more appropriate in the Federal courts, I have come to believe that the sponsors of the legislation figured it out just right. When it comes to determining damages that might be assigned in cases brought in Federal courts, I personally have concluded that there should not be a cap with respect to economic damages.

I further agree with the approach that is taken in the underlying bill, that in cases where noneconomic damages are brought in Federal courts, particularly in those cases where children may be involved who are not working, who do not have a livelihood, or in cases where a spouse—perhaps a woman, but it could easily be a man—who is not in the workforce and stays at home with a family, we may not, if we cap noneconomic damages, be really fair to that young person or to the spouse who is working from home.

However, with respect to damages at the Federal level, as they pertain to punitive claims, I am not comfortable with the approach that is embodied in the underlying bill. Senator Breaux and Senator Frist have offered an approach which I think is better in this regard, and I just want to mention it. It deals with or not there should be punitive damages awarded on actions taken in Federal courts. I conclude they have it right and those punitive damages should not be allowed in the Federal courts.

Having said that, for actions that are brought in State courts, the laws and rules of the States should prevail. If there are caps in the State courts, that is the business of the States, and that is appropriate. If there are no caps on punitive damages in actions brought before the State courts, that is appropriate as well.

As we try to find the compromise here, I believe the underlying bill has it right with the appropriate middle ground on caps and venue. I believe the underlying bill has it right with respect to damages in a Federal action. No caps on either economic or noneconomic damages. I also believe the underlying bill has it right with respect to the proper venue, State versus Federal.

I believe my friend from Louisiana and my friend from Tennessee have a better idea with respect to punitive damages and they simply should not be allowed in Federal court.

Senator LANDRIEU is probably en route to the Chamber now to say a few words with respect to the amendment. I do not see that she has arrived yet. If I may, I would like to just reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I rise to say I wish we were voting on the amendment of the Senator from Delaware. I believe the punitive damages issue in this bill is a major issue.

I understand the decision not to go forward. We know the probable outcome of the vote. But there is no question in my mind that his amendment would cause a movement in the right direction on the issue of punitive damages. This bill, as all of us have pointed out who have concerns about it, is going to be candy land for lawyers. One of the reasons it is going to be is because of the punitive damage language which allows forum shopping for the best punitive damage opportunities; when one under toxics, punitive damages are radically distributed, and should be because the purpose is to create quality health care, and punitive damage awards would drive up insurance costs. That is passed on to the consumer, which means fewer people can afford insurance.

As a practical matter, I want to say that I think the Senator from Delaware is on the right track, and I hope the conference will listen to his common sense.

Mr. CARPER. Mr. President, will the Senator yield? I say to my friend from New Hampshire that my fervent hope is that when the bill passes the Senate
Mr. KYL. Mr. President, I rise to introduce the consumer health care choice amendment. This amendment would amend section 302 of the underlying legislation to provide that employers and health plan issuers would be free to offer, and participants and beneficiaries would be free to choose, health plans with two remedy options, in addition to the general plan covered by this bill, Option No. 1: A low premium policy with a remedy limited to the benefit, or the value of the benefit. Option No. 2: A mid level premium policy that would allow for full economic damages only.

There are in addition to the higher premium policy that would allow for the full range of damages provided under S. 1052.

This amendment should be appealing to employers and plans as a way to control their costs and appealing to employees as a way to hold down their premiums by voluntarily limiting their right to sue.

Data from the CBO and the Kaiser Family Foundation estimate that S. 1052 would cost a typical family with health coverage roughly $300 per year. Certainly, we should promise not to raise the cost of health plans and lead some companies to stop offering health-care coverage, making insurance unaffordable for more Americans. This fact is politically inconvenient.

We should keep an important statistic in mind. According to the Lewin Group consulting firm, for each one optional premium policy that is chosen, additional 300,000 citizens lose their insurance.

As I mentioned, the Congressional Budget Office predicts that S. 1058 will increase premiums by 1 percent. A premium increase of this amount would cause about 1.3 million Americans to become uninsured as a result of S. 1052. The Office of Management and Budget recently predicted that between 4–6 million more Americans would become uninsured as a result of S. 1052.

How can we call this a Patients Bill of Rights when it will result in fewer patients?

I believe our first goal should be to “do no harm”; or, at a minimum, to reduce the harm, as my amendment will do.

My amendment would allow employers or plans to offer two options: one with higher premiums and one with lower premiums. In addition to the general plan covered by this bill, Option No. 1: A low premium policy with a remedy limited to the benefit, or the value of the benefit. Option No. 2: A mid level premium policy that would allow for full economic damages only.

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pay they have their plan. For those who are willing to forgo lawsuit, they can buy their plan. And, state remedies apply in any event—so called “quality of care” suits.

Certainly, enhancing a patient’s right to health care comfort to those who currently can’t afford health insurance, or those who lose their coverage due to increased costs.

Clearly, the proposed legislation to reform health care comes with a steep price tag. Before we go forward to passing legislation, perhaps we should first promise not to pass a bill that will lead to more uninsured Americans.

My amendment would merely reduce this price tag, and reduce the harm we will do by enacting S. 1052.

This amendment is very simple. I ask for my colleagues’ attention because I can’t imagine that anyone would want to oppose this amendment if the concern is really about patients rather than lawyers.

Let me restate that. If we are really concerned about health care for patients rather than fees for lawyers, this amendment will probably do more to provide that we keep people insured than what we have done during the last week because it provides for a simple option.

For any plan of an employer that provides coverage under this bill, they may also offer another option. That option would be a lower cost alternative. The Enzi amendment merely offered a specific kind of policy, which wouldn’t be covered by the act. That is not my amendment. All employers are covered by the act under my amendment. It is just if they offer a plan to their employees, they may in addition to that plan offer this lower cost alternative.

Why do I offer this?

The amendment makes it possible to forgo lawsuit in court, this legislation.

Even if an employee exercised an option to buy this lower cost policy, that employee would still have all of the rights of litigation for damages in State court.

Some have said: Isn’t this a little bit similar to the Enzi amendment? The answer is no. The Enzi amendment said if a particular group of employees were merely offered a specific kind of policy, they wouldn’t be covered by the act. That is not my amendment. All employers are covered by the act under my amendment. It is just if they offer a plan to their employees, they may in addition to that plan offer this lower cost alternative.

Why do I offer this?

The Congressional Budget Office predicts that the underlying bill would result in a 4.2-percent increase in premium costs. This is in addition to the 16- or 12-percent increase that employers are already facing this year.

The Congressional Budget Office report illustrates the cold truth that has been overlooked in this debate; that is, the irrefutable link between health care premium increases and the number of Americans without insurance.

There is a study by the Lewin Group, a consulting firm, which says that for each 1 percent of premium increase, an additional 300,000 citizens lose their insurance.

We have CBO’s estimate that the cost of premiums is going to increase 4.2 percent. We have a study that says every 1 percent, an additional 300,000 people lose their insurance.

Do the math. Under this bill, more than a million Americans are going to lose their insurance if something isn’t done to keep the cost of those premiums down.

The Office of Management and Budget recently predicted that between 4 million and 6 million more Americans would become uninsured as a result of S. 1052.

That is where this amendment comes in. It is probably the best way to ensure that we can get premiums down over an alternative that doesn’t have as much risk for the insurer, and, therefore, won’t have to have as high a premium.

But I reiterate, it is not in lieu of the benefits that we are promising under this bill but, rather, in addition to. It is an option.

For this to occur, three voluntary decisions would have to be made.

First of all, insurance companies would have to develop a product that they might offer to employers or plans to sell for their lower cost option.

Second, employers would have to decide that in addition to the plan offered under the bill, they would offer one of these lower cost alternatives that is on the market.

Third, employees would have to decide to take advantage of that lower cost option.

It is all a matter of choice. Nobody is making anybody do anything. None of the benefits under the legislation go away at all, nor is the State court remedy.

It seems to me, since it is all voluntary, that there is nothing mandatory but it gives us one opportunity to forgo lawsuit damage. It is an option that I would suggest be supportive of this proposal.

I ask that the remaining time that I have not been yielded but, rather, see if there are any others who might wish to speak.

Mr. PRESIDING OFFICER. The President.

Mr. LOTT. Mr. President, if Senator Kennedy will allow me to speak at this point, let me say, first of all, that I enthusiastically support Senator Reid. Everybody has been trying to cooperate. I believe, after this very important amendment, we will have the substitute, and hopefully we would be ready to go to final passage.

I don’t want to usurp the majority’s role here, but I want people to realize that we are to the point where perhaps we can begin to wrap this up.

I thank Senator Kennedy for agreeing to not have lengthy debate. He feels very strongly about it, and this is certainly a very good and valuable alternative.

I heard Senator Bond of Missouri say repeatedly that when it comes to health care, we should make it available, affordable, and safe. One of our greatest concerns about this bill in its present form is health insurance for patients, and what they have available through managed care is not going to go away.

They are going to lose coverage for a variety of reasons. So it is a question of availability and affordability.

This is a good, viable alternative. This provides a low-cost option that will, hopefully, result in more people keeping their coverage. But it is an option. It is not in place of; it is in addition to what will be available otherwise.

It just gives plans the option of offering a low-cost alternative that forgoes lawsuit damages under the law. The State court would still have the “quality of care” damage available. Those lawsuits would still be there.

You don’t replace that.

So I want to emphasize, it is not in lieu of but it is in addition to the plans offered under the bill. This really is about patients, and it really is about the freedom to have a choice, to have an option to choose to have this coverage but not going to lawsuits later on. By paying less, they will be able to afford it. That will give them an option. I think this would be a very attractive way to make sure it is available and affordable.

I would like to speak at greater length on this matter, but in the interest of time I yield the floor.

Mr. PRESIDING OFFICER. The Senator from Kentucky.
Mr. MCCONNELL. Mr. President, I commend the Senator from Arizona, Mr. KYL, for his amendment, which is strikingly similar in concept—as he and I discussed off the floor earlier—to the Auto Choice proposal I have introduced on the last two Congresses, cosponsored by Senator Moynihan and Senator LIEBERMAN.

Essentially what is envisioned in these kinds of choice proposals is giving the consumer the option of opting out of the lottery in return for a lower premium and lower cost.

I want to ask the Senator from Arizona if it is his view that this is similar in concept to the Auto Choice measure that I just described that we have discussed off the floor.

Mr. KYL. Mr. President, if I may answer the question of the Senator from Kentucky, I am remiss for not acknowledging that my idea for this amendment flows directly from the proposal the Senator has just discussed. It seemed to me that if it worked well in that context, it would also work well in this context. I should have mentioned that earlier. I know the Senator did not ask the question to get credit, but credit certainly is due him for this idea.

Mr. MCCONNELL. I cannot announce the support of others, but I wanted to mention that on the Auto Choice bill there was also the support of Michael Dukakis, Joe Lieberman, Pat Moynihan, the Democratic Leadership Council, the New York Times, and the Washington Post.

I cannot say for sure that they would support the amendment offered by the Senator from Arizona, but the concept he describes of giving the consumer the option—the consumer gets the option of leaving aside the litigation lottery in return for a lower premium on the preferred benefits provided for that lower premium. It does not really deny anybody. It does not deny them the right to sue. It does not put a cap on damages. It does not tell the lawyers what to charge. It simply says to the consumer: You have a choice.

What the Senator from Arizona is suggesting is to take what is a sound idea for the automobile insurance market, Auto Choice, and apply it to the health insurance market.

Under his amendment, employers would have the option of offering their employees up to two additional insurance choices. Given the additional choices, employees would have the option of opting out of the lottery in return for a lower premium and lower cost. Nothing in the KyL amendment would be permitted under this bill. I believe giving consumers the option not to participate in the personal injury litigation lottery is only appropriate.

It is important to note, just like my Auto Choice option, choosing Senator KYL’s “Health Choice” option would be completely voluntary to both the employer and the employees. An employer who offers his employees health insurance would merely be allowed to offer only the limited-litigation health policies. Nothing in the KyL amendment would be permitted under this bill. The employer must offer the plans envisioned in the Kennedy-McCain bill.

Therefore, nothing in the KyL amendment would take away any right. It would merely allow consumers who don’t want to sue their health insurance plan, a lower cost health insurance option.

While we have made significant progress at improving this legislation, many of us on this side of the aisle have lingering concerns that this bill will dramatically increase the number of uninsured Americans. We ought do everything possible to minimize this impact and thereby wholeheartedly endorse the proposal of the Senator from Arizona. Patients need more choices and should not be forced into a system of jackpot justice without their consent.

As the Senator from Arizona has pointed out, we hope not to have a greater number of uninsured when this bill is all over. One of the great fears of many of us is that we are going to be voting against this bill is that that is exactly what the result will be. The Senator from Arizona has astutely offered an amendment that will certainly provide an opportunity for a number of people to receive lower premiums and thereby, hopefully, reducing the increase in the number of uninsured Americans which so many of us fear.

So I express my strong support for the Senator’s amendment. I tell him, I think it is a very good idea. I hope the Senate will support it. It seems to me it is entirely consistent with the theme of the underlying bill. I commend the Senator from Arizona for his fine amendment.

Mr. KYL. I thank the Senator.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, as I listened to the proposal by the Senator from Arizona, the thought came to my mind about the right of an individual to waive rights. That is deeply ingrained in the United States, so much so that when you talk about constitutional rights in a criminal case—where the rights are much more deep-seated, much more profound, based on the Constitution—that right to waive does exist.

In a sense, what the Senator from Arizona is proposing is that an individual who seeks health insurance would have the right to waive certain rights, which is recognized in law.

The key phrase which I found persuasive in what the Senator from Arizona had to say was the word “voluntary.” I would add to that—I think this is part of his concept—that it be a knowing waiver—a voluntary, knowing waiver. And I would expect that, as part of that, the individual would have counsel to understand his rights, because you cannot understand your rights for damages—the complexities—unless you know what they are, and whatever may be said about lawyers on this floor, you have a right to have your rights even if you have left by doing the bill, particularly that choice—recognizing that tradeoff between coverage and cost. That is what the whole debate is about. Some would have us believe we can have additional coverage with additional cost. It cannot happen. Somebody pays the freight sooner or later. We all know it is going to result in added health care costs.

So what this amendment does is recognize that tradeoff, and it provides the individual the opportunity to make that choice—recognizing that tradeoff—which results in a very good approach and a very good result.

So I urge my colleagues to give serious consideration to supporting this amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I join with my colleagues in congratulating Senator KYL for bringing this amendment forward. It is exactly one of the
June 29, 2001

CONGRESSIONAL RECORD — SENATE

S7167

items we need to improve this bill significantly. This bill has a lot of problems. We all know that. But an amendment such as Senator Kyl’s will at least help it out in some parts. It will be very constructive to the whole process. I certainly hope my colleagues in the Senate will join in supporting it. It is the right amendment. I congratulate him for bringing it forward.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. How much time do we have?

The PRESIDING OFFICER. The opponents have 10 minutes under the previous order.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, having been on the floor for the better part of the last 8 or 9 days, I rarely have heard such wonderful statements and comments about any amendment as have been given to the Senator from Arizona. I have gone back and forth, read it and reread it and thought that somehow I must be making a mistake in thinking that this amendment just didn’t make it, but in any event, the Senate is going to make that judgment.

I read the Kyl amendment and it reminded me of the great French philosopher who said that laws, in their sublime impartiality, treat the rich and the poor alike, from sleeping under the bridges and stealing bread. This is just exactly what the Kyl amendment does.

Mr. GREGG. Will the Senator yield? That quote would be much better if it were read in French.

Mr. KENNEDY. Petite a petite, l’oiseau fit son nid.

To continue, this is what this amendment does. It says that any employer can go out and sell an insurance policy that is consistent with this bill. It doesn’t indicate what contribution the employer has to make. It doesn’t indicate what the employer has to make any contribution at all. All it says is he has to sell it.

On the other hand, they can sell the other policy—that is cheap—which the employer can help subsidize for that employee. And that basically undermines this whole bill and denies all of the workers all of the protections that we have talked about. That is a great choice. That is really a wonderful choice to have. And we all know what can happen. This basically undermines the whole concept of this legislation.

There is no guarantee under the Senator’s proposal that there is going to be a comparable and that the employer is going to do it. All they have to do is just sell the policy. So this is an extremely unfair and weighted alternative. Basically, it will provide a way, a vehicle for millions and millions and millions of hard-working American families to lose the benefits of this legislation, and it just doesn’t make sense.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. I believe that perhaps if Senator Kyl or others can yield back their time, we are ready to go to the Frist-Breaux substitute. Senator FRIST is here ready to proceed. Is that acceptable on all sides?

Mr. REID. I understand that Senator FRIST would like to quickly proceed. There are several people who would like to speak in support of my amendment. Therefore, I would like to propose that we lay my amendment aside, go to Senator FRIST, and I take up the remainder of my time prior to the vote.

Mr. REID. I have no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is laid aside.

AMENDMENT NO. 856

Mr. FRIST. Mr. President, I call up amendment No. 856 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

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The Senate from Tennessee [Mr. FRIST], for himself and Mr. BREAUX, proposes an amendment numbered 856.

Mr. FRIST. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the amendment is printed in today’s RECORD under “Amendments Submitted.”

Mr. FRIST. Mr. President, I will be brief, given the late hour.

At this juncture, I have introduced an amendment which is a comprehensive approach to the Patients’ Bill of Rights. Essentially this bill is the Frist-Breaux-Jeffords bill which was introduced on May 15 of this year, modified with several of the amendments which I will speak to shortly in the introduction either now or, if we have an interruption, we will speak to them in the 15 minutes on this side.

What I wish to stress is that this amendment is a comprehensive replacement amendment for the bill. It involves strong patient protections, access to specialists, access to specialty care, access to emergency rooms, elimination of gag clauses, continuity of care.

It has a strong appeals process, internal and external appeals. It requires full exhaustion of the internal and external appeals process. If the external decision—again, that is an independent physician, unbiased, independent of the plan—overrides the plan, then and only then does one go to court for the extraordinary damages. At any time during the appeals process you can go for what is called injunctive relief. Once one wins for these damages, what are they? Economic damages are unlimited; noneconomic damages are $750,000 or three times economic damages. And that is a change from the underlying Frist-Breaux-Jeffords bill.

There are no punitive damages. In our bill, as I mentioned, full exhaustion of the internal and external appeals process. We go to Federal court. We have not had very much debate over the last week on the Federal versus State court. Senator BREAUX will be speaking more directly to that. It is critical, we believe, that we take this new Federal cause of action to the Federal courts. There are strong timelines.

The purpose of this amendment is to make sure people get the care they need when they need it—not a year later or 2 years later or 5 years later. It is a balanced approach. The amendment itself is the Frist-Breaux-Jeffords of May 15. We have included the amendments put forth by Senator THOMPSON and modified by Senator MCCAIN on the exhaustion of internal/external appeals. We have also included the Snowe-DeWine language. That is the direct decisionmaker language that they drew upon from our bill, the Frist-Breaux-Jeffords bill. But we took the specific Snowe-DeWine amendment and placed it in our bill; in addition, the amendment of Senator BOND, with the 1 million uninsured, then the liability would be repealed, which passed on the floor, is also a part of our bill.

Secondly, we did raise the non-economic caps from $500,000 to $750,000 or three times economic damages.

As a physician, as someone who has taken care of patients, as someone who recognizes that the purpose of a Patients’ Bill of Rights is for patients to get the care when they need extra-ordinary lawsuits, not frivolous lawsuits and skyrocketing costs, all of which will be absorbed by the 170 million people, we believe this bill is the balanced, responsible way of delivering a strong enforceable Patients’ Bill of Rights.

I yield, if I might, to the cosponsor, coauthor of the bill, Senator BREAUX. Senator JEFFORDS will be speaking a little bit later. The three of us, as part of the Frist-Breaux-Jeffords amendment, have worked very hard over the last 2 years to put together this balanced bill, the only tripartisan bill in the Senate which comprehensively addresses the Patients’ Bill of Rights.

I yield to Senator BREAUX.

Mr. BREAUX. Mr. President, do we have a time agreement on this amendment?

The PRESIDING OFFICER. There is no time established on this amendment.
Mr. Breaux. Let’s try it without an agreement. We will see how it goes without any kind of agreement.

Mr. President, I rise to comment on the bill that is now before the Senate. It is the Frist-Breaux-Jeffords substitute.

Before doing so, while the Senator from Tennessee is still on the floor, I want to say something about how enjoyable it has been to work with him. While most of us are going to be leaving this Chamber tonight or tomorrow sometime to spend time with our families on vacation or have an enjoyable period of time that we can rest and relax, the Senator from Tennessee, because of what he does professionally and what he believes in, is going to be leaving on a flight tonight to go to Africa. He is going to Africa to do surgery on women and children and families who cannot afford health care on the continent of Africa.

I want to say how proud all of us can be of one of our colleagues who has that type of attitude. He not only serves his constituents in Tennessee in this body but also serves so much of humanity in various places in the world by volunteering at his own cost, on his own time, to medical emergencies serving people who have no health care. We are talking about a Patients’ Bill of Rights on the floor of the Senate. He really, truly is practicing that kind of attitude. He not only serves his constituents in Tennessee but also serves so much of humanity in various parts of the world.

For those who are interested in getting a Patients’ Bill of Rights enacted into law, let me say that, without the amendment that we have offered, the bill will not become law because the President has clearly indicated he will veto a bill that does not contain some of the main principles that you can find in the Frist-Breaux-Jeffords substitute.

What I am talking about is not that complicated. The White House has said we are creating new Federal rights, Federal remedies, and we are amending a Federal statute—the ERISA laws of the United States. If there is going to be any litigation dealing with these new Federal rights, they ought to be handled in the Federal courts. Why do we recommend that? Why does the President say that is important? So we can have one consistent way of handling potential suits that will be filed. Instead of having 50 different courts, with 50 different jurisdictions, with 50 different rules of evidence and 50 different procedures on how to handle litigation, you would have any disputes dealing with these Federal rights handled in the Federal court systems of the United States.

Our opponents argue that the Federal courts don’t want any more suits to be filed. Neither do the State courts. There is not a State court in any district court anywhere in the United States that is going to say we need more litigation, come sue on a State level. Neither the Federal nor State courts want any additional litigation because they are as full as they possibly can be. So the argument that the Federal courts don’t want them—well, neither do the States. I think from a matter of trying to make sure we have a system that works, there is a national system that protects Federal rights, it should be in Federal court.

If this is not part of the final package, the final package, indeed, will not become law, and that would be a very serious mistake for the people in this country.

Second, we have recommended some type of caps—a reasonable amount of caps on noneconomic damages. We have no caps on economic damages, of course, but we suggested a cap of $750,000 for pain and suffering, for noneconomic damages, or three times the amount of economic damages, whichever is greater. We tie it to inflation. I think that is reasonable.

We had talked about something I think would be very important for the patients and, indeed, the lawyers who are concerned about litigating cases. There are no caps on our bill for gross negligence. At an earlier time we had offered that there would be no caps for Federal courts. We had argued that was killed as a result of some decision made dealing with medical necessity. Then there would be no caps whatsoever for gross negligence or wrongful death.

Those two ingredients are very important. What we have gotten this bill leaves this body, if we are truly interested in getting an agreement, is that somehow between now and the time this bill gets down to the White House, these concerns are going to have to be addressed in a fashion that I think means they are going to have to be adopted. It does us no good to have a bill that is going to be vetoed. We will help no patients. They get a good political issue, but they don’t get any help, any guarantees. We will have spent all of this time arguing about things that cannot become law. So I think the clear thing that our bill provides, which I think is absolutely essential either now or at some time, is that we have a degree of Federal jurisdiction that enforces the Federal rights that we are creating in this legislation, and that we address the question of unlimited damages in a way that allows the White House to be able to sign this bill. In doing so, I think what we have done with all of the amendments—the Snowe, Thompson, and DeWine amendments—and we have split jurisdiction, and the Kennedy-McCain bill which says some of the suits will be in State court and some in Federal court, our suggestion is just the opposite. The new rights will be in Federal court, and all the previous ones in the State courts will remain.

We need to do some work on this. We have created something that is as complicated as the Egyptian hieroglyphics. If you had a flowchart on what we are suggesting in the bill now before the Senate, we could not figure out where you go and when you go to the different courts and for what rights. That is unacceptable. This thing needs a lot of work before it can become law because I am afraid that what we have created tonight in this bill is unmanageable and unworkable. Our suggestion makes it a great deal better.

I yield the floor. I see my colleague from Vermont is also with us. The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. Jeffords. Mr. President, for nearly 5 years, Congress has debated how best to enhance protections for patients enrolled in managed care plans and employees. The bill would subject employer liability and employee protections. Each provides for information to assist consumers in navigating the health care system. Most importantly, the bills provide for an internal and external independent review process with strong new remedies when the external review process determines that the primary area of disagreement lies in the degree that employers are protected from multiple causes of action in multiple venues and the provision of a reasonable cap on damages.

The better alternative to the McCain-Edwards-Kennedy bill is still fundamentally flawed in two critical areas. First, the bill is subject to lawsuits in 50 different States.

Second, our amendment on employer liability and Senator Thompson for his amendment on exhausting the appeals process.

However, I believe the McCain-Edwards-Kennedy bill has been significantly improved. I particularly commend Senator Snowe for her amendment on employment liability and Senator Thompson for his amendment on exhausting the appeals process.

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For those who are interested in getting a Patients’ Bill of Rights enacted into law, let me say that, without the amendment that we have offered, the bill will not become law because the President has clearly indicated he will veto a bill that does not contain some of the main principles that you can find in the Frist-Breaux-Jeffords substitute.

What I am talking about is not that complicated. The White House has said we are creating new Federal rights, Federal remedies, and we are amending a Federal statute—the ERISA laws of the United States. If there is going to be any litigation dealing with these new Federal rights, they ought to be handled in the Federal courts. Why do we recommend that? Why does the President say that is important? So we can have one consistent way of handling potential suits that will be filed. Instead of having 50 different courts, with 50 different jurisdictions, with 50 different rules of evidence and 50 different procedures on how to handle litigation, you would have any disputes dealing with these Federal rights handled in the Federal court systems of the United States.

Our opponents argue that the Federal courts don’t want any more suits to be filed. Neither do the State courts. There is not a State court in any district court anywhere in the United States that is going to say we need more litigation, come sue on a State level. Neither the Federal nor State courts want any additional litigation because they are as full as they possibly can be. So the argument that the Federal courts don’t want them—well, neither do the States. I think from a matter of trying to make sure we have a system that works, there is a national system that protects Federal rights, it should be in Federal court.

If this is not part of the final package, the final package, indeed, will not become law, and that would be a very serious mistake for the people in this country.

Second, we have recommended some type of caps—a reasonable amount of caps on noneconomic damages. We have no caps on economic damages, of course, but we suggested a cap of $750,000 for pain and suffering, for noneconomic damages, or three times the amount of economic damages, whichever is greater. We tie it to inflation. I think that is reasonable.

We had talked about something I think would be very important for the patients and, indeed, the lawyers who are concerned about litigating cases. There are no caps on our bill for gross negligence. At an earlier time we had offered that there would be no caps for Federal courts. We had argued that was killed as a result of some decision made dealing with medical necessity. Then there would be no caps whatsoever for gross negligence or wrongful death.

Those two ingredients are very important. What we have gotten this bill leaves this body, if we are truly interested in getting an agreement, is that somehow between now and the time this bill gets down to the White House, these concerns are going to have to be addressed in a fashion that I think means they are going to have to be adopted. It does us no good to have a bill that is going to be vetoed. We will help no patients. They get a good political issue, but they don’t get any help, any guarantees. We will have spent all of this time arguing about things that cannot become law. So I think the clear thing that our bill provides, which I think is absolutely essential either now or at some time, is that we have a degree of Federal jurisdiction that enforces the Federal rights that we are creating in this legislation, and that we address the question of unlimited damages in a way that allows the White House to be able to sign this bill. In doing so, I think what we have done with all of the amendments—the Snowe, Thompson, and DeWine amendments—and we have split jurisdiction, and the Kennedy-McCain bill which says some of the suits will be in State court and some in Federal court, our suggestion is just the opposite. The new rights will be in Federal court, and all the previous ones in the State courts will remain.

We need to do some work on this. We have created something that is as complicated as the Egyptian hieroglyphics. If you had a flowchart on what we are suggesting in the bill now before the Senate, we could not figure out where you go and when you go to the different courts and for what rights. That is unacceptable. This thing needs a lot of work before it can become law because I am afraid that what we have created tonight in this bill is unmanageable and unworkable. Our suggestion makes it a great deal better.

I yield the floor. I see my colleague from Vermont is also with us.
same time, it gives deference to the states to allow them to continue enforcing managed care laws consistent with the new federal rules.

Under our amendment health plans that fail to comply with independent review provisions or that harm patients by delaying care will be held accountable through expanded federal court remedies, including unlimited economic damages. In addition, patients can go to court at any time to get the health benefits they need through injunctive relief. Failing to go through the internal or external review process would cause them irreparable harm.

We hope that everyone who is committed to passing legislation that can become law this year will join us in supporting this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. EDWARDS. Mr. President, over the last couple of days, during the course of this debate, we have made great progress and consensus has been reached on many issues, beginning with the issue of scope, how many Americans would be covered by this patient legislation.

We have worked with Senators across the aisle and have been able to resolve that issue and resolve it in a way that all Americans are covered and there is a floor of protection for all Americans. We believe we have been able to arrive at an agreement that there will be hundreds of miles away, and most important, and the reason so many of these objective bodies said these cases belong in State court, is that it will take so long to get the case heard. There is such a backlog already, it makes no sense to send these cases to Federal court.

What we have done instead is say: You, HMO, if you are going to overrule doctors, if you are going to make health care decisions, we are going to treat you exactly as we treat the other health care providers. We treat them exactly the same. It is the reason this is such a critical provision to the American Medical Association, to all the doctors groups across this country and to the consumer groups across America.

There are fundamental differences in our underlying legislation, as amended, and in the substitute, starting with the scope. In the substitute, we have reached consensus, going to the issue of exhaustion of administrative remedies, which is not in this substitute; the required independence of the review panel is not in the substitute; the requirement that the cases that every objective body says should go to State court, including the U.S. Supreme Court, those cases go to Federal court instead under this provision.

We have made tremendous progress. I am very pleased with the work of all of our colleagues—Republicans, Democrats, and Independent—in this process. The work has been productive. We have done important work in the Senate, but it is not important to us. It is important, for the people of this country, the families of this country who deserve more control over their health care decisions, who deserve real rights, enforceable rights.

That is what we have been able to accomplish over the last couple of days. Unfortunately, in every respect in which this substitute is different from the underlying legislation, as amended, it favors the HMO versus the patient. In every respect, we favor the patient; they favor the HMO.

I say to my colleagues who sponsored this amendment, I know they are well-intentioned. I know they worked very hard on it. I respect every one of them, and I respect the work they have done, but I believe the work we have, in fact, done in this Chamber over the last 2 weeks is a much better product and, most importantly, will provide meaningful protections for the patients and families of this country who deserve it and have the right to have the law on their side instead of having the law on the side of the big HMOs.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. There is no time limit.

Mr. KENNEDY. Mr. President, I thank my good friend, Mr. Frist. Senator Frist has been the chairman of our Public Health Subcommittee and he and I have worked on a lot of different health care issues together.

I thank Senator Jeffords who has been a strong ally on many health care issues over a long period of time.

I have also worked extensively with the Senator from Louisiana, Mr. Breaux, on many health care issues.

The fact is, when you have this combination of people making a strong recommendation, it is worthy for the Senate to give a true examination of their product and their recommendation this evening.

Having said all of that, it is worthwhile in the final minutes of this debate and before action that we give special consideration to the viewpoints of the doctors, the nurses, and the patients who have followed this issue and have really breathed life into this issue over a long time.

The point I would like to have at this time, there is only one matter that is before us that has the complete support of the medical profession, the nurses, the doctors, all of the groups that represent the children in this country, all the groups that represent the disability community, all of the groups that represent the Cancer Society, all the groups that represent the aged, all the groups that represent the special needs of people who have special medical challenges. They have had a chance to review each and every provision. They know every aspect of every page of all the legislation and the amendments, and they come down virtually unanimously in
support of the McCain-Edwards legislation.

Senator Edwards has already outlined and Senator McCain will further outline the various concerns.

Let me mention matters we have focused on in debate.

The clinical trials. We are in the century of life sciences, and we are putting resources into and investing in the NIH. We are never going to get the benefits of research in the laboratory to the bedside unless we have effective clinical trials.

We have strong commitments on clinical trials; Breaux-Frist is short on that, and it will take up to 5 years to begin the clinical trials.

Specialty care: We guarantee specialty care. Any mother who brings in a child who has cancer will be able to get the specialty care. Breaux-Frist does not provide it. If it is not within that particular HMO, then it is not a medically reviewable decision. There are restrictions in the bill.

We have debated the issues of appeals. Breaux-Frist still has provisions where the HMO will be selecting the appeals, which is essentially selecting the judge and jury in these appeals.

Liability: As has been pointed out, Breaux-Frist brings all the liability into the Federal system. Every patient group and every group that concerned itself about getting true accountability for patients understands the importance of keeping liability in the State court.

Even though the words are similar, although we have the issues of medical necessity, although we use the words of specialization, although the words of appeals are used in both bills, there is a dramatic and significant difference. Those are the two choices before the Senate.

I thank our colleagues and friends on the other side. There really is only one true Patients’ Bill of Rights that is going to protect the patients in this country, the families, the children, the women, the patients in this Nation, and that is the McCain-Edwards bill. I hope we support that shortly.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. Ensign. I ask unanimous consent action with respect to Ensign amendment No. 849 be defeated. The Senate vote in relation to the amendment following the disposition of the Kyl amendment, with up to 10 minutes equally divided for debate prior to that vote.

Mr. Lott. Reserving the right to object, I hope the Senator will withhold. I think a continued effort is underway, and if he will withhold at this point—I prefer not to object—let’s see if we can’t work it out.

Mr. Ensign. I withdraw my unanimous consent request.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCain. Mr. President, I thank Senators Breaux and Frist for their efforts. I believe they have a goodwill attitude toward this issue. I especially thank Dr. Frist for his leadership not only on this issue but on so many other health care issues that come before the Senate. I respect their commitment in protecting patients and holding health plans accountable. I believe the substitute has a mutually shared goal.

Both my colleagues, Senators Edwards and Kennedy, point out some of the differences between our two bills. I remind Members that the amendment is very limited, that it is relief in Federal court and would only allow a handful of cases to be addressed: Only those patients who receive approval from the external medical review can go to court.

Numerous States, including my home State of Arizona, have enacted laws that permit injured patients to hold plans legally responsible for their negligent medical decisions. I believe this substitute nullifies these laws. My colleagues may do what they all wish to do in order to preempt State law, but I respectfully disagree. Delaying and denying care by an HMO is not a contract issue for Federal court. Delaying and denying care is a medical malpractice and should be determined in State court.

As we know, this is a substitute. Over the last 2 weeks we have made some very important changes to this legislation, which is the appropriate way to legislate. We have made important changes, I would like to thank Senator Snowe and Senator DeWine and others; exhausting administrative procedures, thanks to Senator Thompson and Senator Edwards; limits on legal fees, an effort undertaken by Senator WARNER; reasonable scope, protecting all Americans, limitations on class action suits, and venue to prevent forum shopping, in which Senator Thompson and others were involved.

Some of these have been included in the substitute. I believe all of these changes that have been made through open and honest debate on this legislation should be included.

Again, we still have avoided the fundamental issue of State and Federal court. I believe that issue is not resolved to the satisfaction of the patient as opposed to the HMO.

I take an additional minute to thank a number of people including the White House—Dr. Thompson and Anne Phelps; Senator Gregg’s stewardship on this side has been exemplary; Senators Frist and Breaux have obviously been very helpful; Senators Snowe, Lincoln, DeWine, Nelson, and Thompson. I thank both Senators, Senator Daschle and Senator Lott, as well as Senator Reid and Senator Nickles, who have been involved in this issue for a long time, as well as Senator Edwards and Senator Kennedy.

Soon we will vote on this legislation. I believe we all hope to think this, like the campaign finance reform bill, has been open, honest, fair debate on which all sides have been heard, and I think, again, the Senate can be proud, no matter what the outcome, of the way we proceeded to address this issue which is important to so many millions of Americans.

This is an important issue to American citizens. This important issue to the person who cannot contribute a lot of money to American political campaigns. This is an important issue to average citizens whose voices are oftentimes drowned out in Washington, in my view, by the voices of the special interests, where a single trial lawyer can bankrupt the insurance companies, HMOs, or others.

I think putting patients first and the HMOs second, as we crafted this legislation, is an important outcome and why I have to oppose the substitute and urge my colleagues to vote favorably when we reach final passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. Nickles. I will make two or three comments. First, I compliment and congratulate Senator Kennedy and Senator Gregg for their patience and leadership in managing this bill and also managing the education bill. Also, congratulate Senator McCain and Senator Edwards for their contribution because they are going to pass a bill, and Senator Daschle, as well.

This has been a battle that some have been wrestling with for a long time. We are in a marathon, and a year ago we passed legislation that was called Patients’ Bill of Rights Plus. In my opinion, it is far superior to the legislation we are getting ready to pass tonight. It was legislation that allowed every plan to have an appeal, internal and external, and it was binding—not binding by lawsuits, but if you did not comply with external appeal, you could be fined $10,000 a day—a different approach. I think it is far superior.

I am truly looking at the language we have today and in the underlying bill, the so-called McCain-Edwards-Kennedy bill, maybe some modest improvements have been made. It is the bill that will finally pass, but it is a bill that the President will not sign and the President shouldn’t sign.

I hope we will pass good legislation but not pass legislation that will dramatically increase health care costs, as I am afraid it will. There has to be a way that consumers that voluntarily supply health care, purchase health care for their employees, that employers of all sizes are almost unanimous in their opposition. They are not compelled to buy health care for employees, but they want to. Now we are getting ready to threaten them with unlimited liability. We keep hearing about suing the HMOs, but suing the HMOs and/or employers and threatening them with unlimited liability, economic damages, unlimited non-economic damages, pain and suffering—there are costs included.

Somebody said we solve that because we have a designated decisionmaker. If
there is a designated decisionmaker, the net result is, well, if you are going to hand off your liability to me, what am I protecting? What am I insuring?

With contracts that can be abrogated or breached, an independent reviewer can come to covenants to things, and you have a lot of liability if things do not work out. The net result will be the independent reviewer will say, defensive medicine, we will pay for anything because they don't want to be sued. They don't want to be liable. They prefer premiums, no matter whatever the liability is, they don't know how much it is or how expensive it is, and they will increase their rates. They don't plan on losing money and they don't want to go out of business, so there will be a lot of defensive medicine and they will charge extra premiums to the employer to make sure they don't go out of business.

So the cost estimates, some people have said, are 4- or 5-percent per year increases on top of the already 13- or 20-percent increases built in, in increased costs for health care. They are probably much more. The costs of the bill could increase the cost of health care by 8 to 10 percent. We should know that.

Again, we should do no harm. We should not pass legislation that will not work, that will do harm. It will do harm if you increase the number of uninsured. It will do harm if you increase the number of uninsured. It will scare people away from insurance, will scare people away from insurance. That is a mistake.

I am afraid the combination of the two, the premium that you can sue employers and the providers for unlimited damages in State and/or Federal court for economic and non-economic, unlimited in both cases. You can jury shop. You can find a place that would work. That is going to scare employers. Employers beware, the bill we are passing tonight makes you liable. You are going to have to pay a lot more in health care costs as a result of the bill we are passing tonight.

Again, my compliments to the sponsors. They worked hard. The opponents worked hard. We will pass a bill tonight. But I hope it will be improved dramatically in conference so we will have a bill that is affordable, will not increase the number of uninsured, will not increase the number of uninsured by billions. My prediction is this bill would increase the number of uninsured by millions and cost billions and billions of dollars. I hope that is not the case. I hope it is fixed and improved in conference and we will have a bill that President Bush can sign and become law and of which we will all be proud. Unfortunately, I think the underlying bill does not meet that test.

With great reluctance I am going to be voting no on the emergency insurance, will not increase the number of uninsured by millions. I think that is not the case. I hope it is fixed and improved in conference and we will have a bill that President Bush can sign and become law and of which we will all be proud. Unfortunately, I think the underlying bill does not meet that test.

The DISAUING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I regret deeply I will not be able to vote for this bill. My State does not have a problem with the HMOs that other people have expressed. Our State would be mandated by this bill to change its laws. The Senate amendment offered by Senator COLLINS was defeated. The Allard amendments that dealt with small business were defeated. The mandates in this bill will hamper our development of a sound health care delivery system for Alaska.

It is a vast area with a few people. We do not need the interference of the Federal Government. We need help. I think this bill will interfere with what we need to do. If the underlying bill comes out of conference I will be able to support it. I commend everyone who has tried, but this, the underlying bill, will not help our people; it will hurt them; and I cannot support it.

The PRESIDING OFFICER. The Senator from Texas.

Mr. THOMPSON. Mr. President, I think this bill is a lot better than when we started. There remains one area, of course, where we have substantial disagreement, and that has to do with where the lawsuits are going to be brought. The underlying bill still has a bifurcated system where some suits can be brought to State court and some in Federal court. I think that is the main thing the Pritz-Breaux-Jeffords amendment tried to take out.

We all can read the handwriting on the wall. I think we know how this is going to go. It is very important our colleagues understand what we are doing. With regard to the underlying bill there is a problem. It is appar-
ently, that a client will walk into a lawyer's office with a tag around his neck saying, I'm a State suit, or, I'm a Federal suit. That will not be the case. There will be many cases that are调解 out that there are some downsides to that. There will be an appeal in that venue. Then that will be determined, and then it will go possibly to the opposite court. In other words, it will be litigation at one or more levels in order to determine where you are going to litigate.

Some, on the other hand, will go to State court, and there will be a fight there as to whether or not that belongs in State court. It may be remedied over to Federal court.

Some will come in with cases, parts of which will arguably be in Federal court and parts of the same case could arguably be in State court.

I am suggesting there is no easy solution to this. It has been pointed out that there are some down sides to bringing them in Federal court, too. They are overcrowded. We have heard examples of federally related lawyers saying it ought to be in State court. If you took a poll among the State-related lawyers and judges, they would say just the opposite. But at least you avoid the problems I am talking about.

We are going into a system now where we are creating new law; we are creating new defendants. But wait, it is not just HMOs and employers. The
Mr. DASCHLE. We are just about at the point now where I think we can begin voting on amendments. I ask unanimous consent that following the unification, the managers' package be permitted to offer a joint managers' amendment following the passage, prior to the close of business today.

Mr. GREGG. Reserving the right to object, on the managers' package we are working to try to reach an agreement. Hopefully, we will reach an agreement. If we do not reach an agreement—my understanding correct that we have to reach agreement by the end of today? What is the parliamentary situation if we do not reach an agreement by the end of today?

Mr. DASCHLE. Mr. President, there would not be a managers' amendment if we could not find mutual agreement on the amendment.

Mr. GREGG. I thank the majority leader.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 854

Mr. KYL. Mr. President, I ask unanimous consent Senator NICKLES be shown as a co-sponsor of amendment No. 854.

The PRESIDING OFFICER. Who yields time?

Mr. KYL is not a loophole. It is an agreement by the end of today? We think this would provide the remedy for that.

Mr. CRAIG. Mr. President, the hour is late, but the Ky amendment is important. There is no shame here at all. It is the marketplace at work—voluntarily to provide the employee with options. The employer must provide health care programs that fit this bill, that fit the Patients' Bill of Rights, but in doing so they also can provide a voluntary option if the employee chooses to take it, which simply says you waive your rights to a lawsuit. And guess what. It might cost that employee less money. Yet he and she, and their families, might still be covered.

Isn't that a reasonable option and a voluntary option to provide to the marketplace?

How dare we say that every attorney ought to have a right here? Why not say every employee has a right to a marketplace of options that this voluntary approach that the Senator from Arizona provides to the health care system of our country?

I support the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, over the past 8 days we have had amendment after amendment that have created massive loopholes in the very basic and fundamental fabric of this legislation, which is to protect patients, protect families, protect doctors, and protect medical decisions against the bottom line of HMOs. This is another one of those in the parade, and it should be rejected. The PRESIDING OFFICER. Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask for 1 minute.

Mr. President, the option provided by Senator KYL is not a loophole. It is an agreement by the end of today? We think this would provide the remedy for that.

The Kyl amendment will permit a company to offer a sham policy and a real policy. To get the real policy, an employee will have to weigh all of his or her rights under the liability provisions of the McCain-Edwards bill. These are the alternatives. I basically undermines the whole concept of this legislation because it will permit employers and HMOs to escape any kind of accountability upon which this legislation is built. That creates a massive loophole which is undermining the whole purpose of this legislation.

I hope the amendment will be defeated.

Mr. KYL. There are two people I know of who would like to speak briefly on my amendment. I would like to respond briefly to what Senator KENNEDY said and then summarize. May I begin by congratulating the authors of the underlying legislation and expressing appreciation for all those who have worked with me. Especially, but he let me know early on when I first came to the Senate he didn't expect to agree with me on every issue. He said he might even be in disagreement on some matters with me from time to time.

I appreciate his efforts and the efforts of all of those who have worked with me. Just to summarize for those who were not here earlier, my amendment is very simple. It merely provides an option of opting out of plans that are covered by this bill to also provide an alternative for their employees. That would permit the employees to have as their remedy the receipt of the health care or for the cost of that health care rather than going to court and having them pay for damages as they are permitted to do under the bill. This should provide a lower cost alternative that could be made available to them. That, in turn, should provide a way for employers that might otherwise have to reduce the number of employees covered, or not have insurance for their employees at all, to continue to provide that coverage.

As I pointed out before, according to the Congressional Budget Office information, and the Lewin Group, probably over a million American citizens will lose their health care as a result of the increased expenses that could result from this legislation.

The effort that we have all tried to engage is to find ways to reduce those costs so premiums won't go up as much and so employers can continue to provide the care. The best way to do that is to allow them to provide a purely voluntary option for their employees to accept, which would not have the same lawsuit damage option but would provide them the health care for which they have contracted. It is about health benefits rather than lawsuits. We think this would provide the remedies for that.

The only comment that Senator KENNEDY made in opposition was that we are not regulating how the employer would have to contribute toward the insurance policies for their employees. That is very true. We are not doing that in the underlying bill. We are not doing it in the Breaux-Frist amendment. We are not doing it in my amendment. I don't think anybody here has suggested we should be mandating from the Federal Government that employers have to provide protection to pay for their insurance option that they provide for their employees. I do not think that is a relevant point.

I reserve the remainder of my time for those who wish to speak to it. Then I will be prepared to yield back. Mr. KENNEDY. Mr. President, I will just take 1 minute.

The Kyl amendment will permit a company to offer a sham policy and a real policy. To get the real policy, an employee will have to weigh all of his or her rights under the liability provisions of the McCain-Edwards bill. These are the alternatives. I basically undermines the whole concept of this legislation because it will permit employers and HMOs to escape any kind of accountability upon which this legislation is built. That creates a massive loophole which is undermining the whole purpose of this legislation.

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The PRESIDING OFFICER. The Senator from Idaho.

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I hope the amendment will be defeated.
It would simply give the employee an option, if he thought it would save him money and he or she didn’t intend to sue for benefits, to choose a policy that could be cheaper and simply not have certain lawsuit rights but, in fact, that operate for liability purposes under current law. It is no worse than current law. That is an option that could save a working family money that they need for their budget.

For those who want all matters to be exactly the same, I don’t see why they would resist such an option. I think it is good for the employees.

I salute Senator KYL. I also note that Senator JEFFORDS had a hearing recently on the uninsured in America. We know there are over 40 million uninsured and that every 1 percent increase in insurance costs causes 300,000 people to drop off the insurance rolls.

I think it is a good move. I support it.

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The yeas and nays were ordered.

Mr. KYL. Mr. President, there is nothing mandatory in this legislation. It is all voluntary. It is a simple choice for the employees. I hope my colleagues will support the amendment.

The PRESIDING OFFICER. Is all time yielded?

Mr. KYL. Mr. President, I yield all time on this side.

The PRESIDING OFFICER. The question is on agreeing to the Kyl substitute amendment No. 856. Mr. EDWARDS, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The yeas and nays are ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Alaska (Mr. GRAMM), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Mississippi (Mr. LOTT) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 59, as follows:

[ROLL Call Vote No. 211 Leg.]

YEAS—36

NAYS—59
I want to tell my colleagues about the Malone family from Everett, Washington. Their son, Ian, was born with brain damage that makes it very difficult for him to swallow, to even cough and gag properly. He cannot eat or drink but is being fed through a tube in his stomach since he can’t swallow.

The doctors at Children’s Hospital in Seattle, one of the best pediatric care institutions in the world—said that Ian could leave the Intensive Care Unit but would need 16 hours of home nursing care a day for Ian. And while initially the Malone’s health insurance company agreed to pay for the care, it decided to cut it off. Ian’s father says that “The insurance company told us to give Ian up for adoption and let the taxpayers step in and pay for his care. They didn’t care. It was all about saving money.”

It seems that the week’s rhetoric has centered on the idea of business and employers versus patients—as if these two are inherently antithetical, rather than complementary. But they are not. In fact, I believe the Bipartisan Patient Protection Act is a balanced approach to protecting patients and protecting the business of managed care.

My home State of Washington has been a leader in providing health care to all of its citizens and has enacted strong patient protections at the state level. Under Washington State law, patients have the right to accurate and accessible information about their health insurance; the right to a second opinion; the right to access to services by qualified medical personnel; the right to appeal decisions to an independent review board; and the ability to sue providers for damages if they are substantially harmed by a provider’s decisions.

I believe that States are the laboratories of democracy and I do not take lightly the possibility that any federal legislation would undermine the pre-empt state law. I spent six years on the Health Care Committee in the State House of Representatives and just this last year Washington passed a comprehensive Patient’s Bill of Rights. On issues such as the one before us this week, it is paramount that federal legislation enhance state protections, not undermine them.

And that is what this bill does. The McCain-Edward-Kennedy compromise explicitly preserves strong state patient protection laws that substantially comply with the protections in the Federal bill. This is an extremely important point. The standards for certifying state laws that meet or exceed the Federal minimum standard ensure that only more protective State laws replace the Federal standards.

But I find it ironic that opponents of a strong, enforceable, Patients’ Bill of Rights have traditionally limited the scope of the patient protections in their managed care reform legislation to the few individuals in self-insured plans, which are not regulated by the States, and assert that the States are responsible for the rest.

This approach denies Federal protections to millions of Americans—teachers, police officers, firefighters and nurses who work for State and local governments; most farmers and independent business owners who purchase their own insurance; and small businesses who are covered by small group insurance policies, and millions more who are covered by a health maintenance organization. We need federal protections so that all Americans are guaranteed basic rights.

In fact, no state has passed all the protections in the bipartisan McCain-Edward-Kennedy Patients’ Bill of Rights. To fail to enact this bill would mean that sometimes workers in the same company, will have different protections under the law. The scope of this legislation simply ensures that all Americans in all health plans have the same basic level of patient protections.

Let me focus for a few minutes on what this bill does. This bill allows a patient’s right to hear the full range of treatment options from their doctors, and it prohibits financial incentives to limiting medical care.

This bill allows patients to go to the first available emergency room when they are facing an emergency—regardless of whether that particular E.R. is in their managed care network.

This bill allows women to go directly to their obstetrician or gynecologist without going through a “gatekeeper,” and it allows parents to bring children directly to pediatricians instead of having to go through primary care physicians.

This bill promotes informed decision-making by requiring health plans and insurance companies to provide details about plan benefits, restrictions and exclusions, and other important information about coverage and rights under the legislation.

Finally, the Bipartisan Patient Protection Act holds insurers and HMOs accountable for their acts.

Twenty years ago, very few Americans were in managed care plans. Since the early 1990s, however, insured workers’ enrollment in traditional fee-for-service plans has dropped from about 50 percent to under 25 percent. The broad shift to managed care has been driven, largely by employers in an effort to control health care costs. It is imperative that we do not forget what we are supposed to be doing—including health care.

There are no fewer issues more important in the 107th Congress than the one we are voting on today. Health care affects people personally, every day of their lives, and we have a real responsibility to ensure that any changes we make put the patient’s interests first. That is what this bill does, and I proudly rise in support of the Bipartisan Patient Protection Act.

Mr. President, I was prepared to offer an amendment to S. 1052 concerning mandatory arbitration to ensure that HMOs are held accountable for their actions, which after all is one of the primary purposes of this bill. I am happy to offer that amendment, so I wanted to discuss it with the lead sponsors of the bill and ask them to clarify their intent.

Some managed care organizations currently require patients to sign-manifest contracts that require arbitration before any disputes are resolved. These provisions effectively deny injured patients the right to take their HMO to court. Instead they are forced to go into binding arbitration, which can be a stacked deck against patients. I spent much of the past 10 days debating whether injured patients should be able to go to court to vindicate their rights. It is clear that a majority of the Senate supports such a provision we would not be about to pass this legislation.

So I am asking my colleagues to clarify that it is the intent of the sponsors that injured patients are granted legal rights under this legislation that they permit them to go either state or federal court to pursue compensation and redress, notwithstanding a mandatory arbitration provision in an HMO contract. Can they further clarify that it is not the intent of the sponsors of this legislation that patients will lose the legal rights we are providing in this bill by being forced into mandatory binding arbitration? In these arbitrations, the HMO chooses the arbitrator, there are substantial up-front costs that the patient has to bear, there is limited discovery, no right to appeal, and no public record or pre-emptive right of review.

Mr. McCaine. I thank my friend from Wisconsin for raising this very important issue about this legislation. We have come very far on this legislation. It is the intent of the bill’s sponsors and of the majority about to pass this bill that patients will have the full legal rights provided under this historic legislation. It is not our intent to provide these important legal rights on the one hand and then allow them to be taken away by mandatory arbitration clauses entered into in advance disputes. We have said that this bill gives patients the right to an external appeal process and to go to court, and we intend that cases arising under these rights should be heard by the external review body in court, and not by private arbitrators.

Mr. Kennedy. If the Senator would yield, I agree that our bill would be severely undermined if health insurers could avoid the protections we have tried to guarantee in this bill by inserting a clause in the fine print of the contract to require binding arbitration of disputes that might later arise.
Mr. EDWARDS. I agree with my distinguished colleagues that HMOs should not be permitted to revoke the protections we have worked so hard to provide in this bill through the use of mandatory binding arbitration provisions. Patients have no ability to backdoor the fine print of the health insurance contracts. That is why we had to provide federal standards in this bill, and it would be wholly contrary to the approach of this bill to allow a backdoor route for these standards and protections to be avoided.

Mr. FEINGOLD. I thank my colleagues, the prime sponsors of this legislation for these clarifications. Based on these assurances, I will not offer my amendment. I yield the floor.

Mr. ROCKEFELLER. Mr. President, during the past five years, we have debated the merits and faults of assorted patients' rights legislation. We have offered, have shared stories, and we have reduced strong legislation—legislation that held the real possibility of protecting all Americans—to weaker law that protects a majority of the population. Our work at times spoke of this issue in the abstract, yet there was no contract about it. The 180 million Americans enrolled in health care plans have always understood exactly what it means to have insufficient coverage. However, they are not sitting on the edges of their seats, watching silently while we decide who will wait breathlessly for an outcome. Instead, they are engaged in the battles they have fought for far too long, and their disputes have far higher stakes. They are, quite literally, fighting with managed care organizations for their lives. The American people are tired, Mr. President, and deserve relief from these battles. They deserve good health and the peace of mind that comes with quality care. It is time we cast aside our partisan bickering and give the American people the right to health care, as well as the right to seek redress if denied quality health care. It is time to pass the Patients' Bill of Rights.

Recognizing that 43 million Americans go without health insurance each day, and millions more carry partial to inadequate health coverage, I have worked with my colleagues both in committee and on the floor to deliver quality care that truly benefits patients. I am convinced that such health care coverage must include liability when needed care is denied, resulting in injury or death. Quality care must also include patients' access to medical specialists, and an appeals and review process when such access is denied. The McCain-Edwards-Kennedy bill includes these stipulations and goes one step further. It ensures that, for the first time, all Americans enrolled in health plans will be given access to the care they need.

With this in mind, I would like to enthusiastically endorse the McCain-Edwards-Kennedy Patients' Bill of Rights. A bipartisan effort in all regards, the legislation before us will ensure access to the quality of care that all Americans need—access which they deserve. First and foremost, it grants every individual with health coverage in the same constitutional rights. Second, the McCain-Edwards-Kennedy legislation, for example, women, children, and the critically ill—often, the groups that are denied the care they need—will be given access to doctors who will determine their health needs.

If denied such care, patients will also be given the opportunity to immediately appeal decisions. By employing independent review boards, victims will be able to seek second opinions prior to the denial of care. The McCain-Edwards-Kennedy bill ensures access to medical treatments, before it is too late. To date, thousands of patients have died as a result of decisions made by non-medical HMO personnel who merely sought to reduce cost and increase profits, a legislation, that need not happen ever again.

We now have come to agreements so that the pending legislation will allow employees to seek punitive damages only if their employers willfully and repeatedly lied to patients that results in injury or death. Though some might argue that this will increase the cost of health care and, by extension, increase the number of uninsured in America, studies in states that have implemented similar protections have shown that this just is not the case. This right serves as a check against irresponsible decision-making and is critical to the legislation before us.

Finally, the McCain-Edwards-Kennedy Patients' Bill of Rights provides hope for those suffering from chronic illness by encouraging the use of clinical trials if no other treatment exists. Alzheimer's, AIDS, and cancer patients, for example, have real hope that alternative therapies may improve their suffering and offer a long-term cure. This element of the legislation is long overdue. I fought along with other members of this body for this right as part of the Medicare program—yet the same opportunity does not exist for those with private coverage. It is a right—and it is time to help the seriously ill so that they can fight their illness, not their insurance company.

We have been debating this issue for five years, and we truly believe that we all agree patients deserve quality health care. Here on the floor, we concur on many of the issues that held this legislation up in conference last year. I was a member of that conference committee, and can safely say the negotiating we have done here has greatly improved the bipartisan support for the Patients' Bill of Rights, previously lacked in conference. We have negotiated and agree upon scope between state and federal law, and on the same quality care. Under the McCain-Edwards-Kennedy Patients' Bill of Rights, HMOs put too many obstacles to basic care. Even worse, too many patients are being denied essential treatment based on the bottom line rather than on what is best for them.

The Patients Bill of Rights will ensure that patients come first—not HMO profits or health plan bureaucrats. It makes sure that doctors, in consultation with patients, can decide what treatments are medically necessary. It gives patients access to information about all available treatments and not just the cheapest. Whether it's emergency care, pursuing treatment by an appropriate specialist, providing women with direct access to an OB-GYN, or giving a patient a chance to try an innovative new treatment that could save their life—these are rights that all Americans in health plans should have. And questions concerning these rights should be answered by caring physicians and concerned families—not by a calculator. This bill puts these decisions back in human hands where they belong.

This legislation will also make sure these rights are enforceable by allowing patients to hold health plans accountable for the decisions they make. First, all health plans must have an external appeals process in place, so that patients who challenge HMO decisions may take their case to an independent panel of medical experts. The External Reviewer must be independent from the health plan and must take valid medical evidence into account when deciding whether a treatment was inappropriately denied. The vast
I was pleased that during the course of this debate, the Senate adopted an amendment that further clarified the rules of external review process. I shared the concerns of Wisconsin employers and insurers that the original version could have potentially allowed an external reviewer to order coverage of a medical service that the health plan had already covered or had allowed in its plan. I strongly support the creation of a strong, independent external review process to address disputes between a patient and their insurer over whether a service is medically necessary. At the same time, I believe employers who offer their employees health care coverage and enter into a contract with a health plan should have a level of certainty as to the specific services that are not covered under the plan.

That is why I voted for the McCain-Bayh amendment, which preserves the sanctity of the contract and makes it crystal clear that a reviewer may not order coverage of any treatment that is specifically excluded or limited under the plan. At the same time, it allows reviewers to order coverage of medically necessary services that are in dispute. In addition, if a health plan felt that a reviewer had a pattern of ordering care of questionable medical benefit, the plan could appeal the decision to an external review to have that reviewer decertified.

I recognize that some preferred the approach offered by Senators Nelson and Kyl. In addressing this issue, however, I opposed the Nelson-Kyl amendment because it went a step too far. By attempting to have the Federal Government create a national definition of “medical necessity,” it would create a regulatory nightmare for patients and providers, and could potentially result in a system that nobody understands and is too rigid to move with the advances in medical technology and treatment. The compromise amendment offered by Senator McCain struck a more appropriate balance by protecting the sanctity of health plan contracts while allowing patients real recourse through an external appeal for medical necessity disputes.

Beyond the external review process, if a health plan’s decision to deny or delay care results in death or injury to the patient, this bill ensures that the health plan can be held accountable for its actions. And this bill, as amended, includes clear protections for employers. I was pleased to support the amendment offered by Senators Snowe and Nelson which further clarified the difficult issue of employer liability.

Let me make it clear that our main objective is to make sure that patients have access to the treatments they need and deserve, and that if a health plan wrongly delays or denies treatment that causes injury or death, that patients can hold their health plans accountable—just like they would hold their doctor accountable if their doctor’s action caused injury or death. In other words, the patient should be able to hold accountable that entity who directly made the decision to deny care, and I think it’s critical that we shield from liability all employers who had no hand in making the decision.

That is why I supported the amendment by Senators Snowe and Nelson, which provides strong protections for employers from being sued by allowing them to choose a “designated decision-maker” to be in charge of making medical decisions and to take on all liability risk. In the case of an employer who offers a fully insured health plan, the health insurance company which the employer contracts with is deemed to be that designated decisionmaker, and the employer is therefore protected from lawsuits. In the case of an employer that offers a self-insured health plan, that employer may contract with a third-party administrator to administer health plan decisions. That third party administrator would agree to be the designated decisionmaker and the employer is shielded from lawsuits. Only those employers that act as insurers and directly make medical decisions can be held liable should an employer be found accountable. This group accounts for only approximately 5 percent of all employers in the country.

This bill now makes it clear that employers—who voluntarily provide health care coverage to their employees and the vast majority of which do not act as insurers by making medical decisions—are shielded from lawsuits. This is in total agreement with President Bush’s stated principles of a Patients Bill of Rights he could sign, where he said, and I quote: “Only employers who retain responsibility for and make final medical decisions should be subject to suit.” That is exactly what this bill does. It is one of the main keys to this bill being the right choice. It is enforceable, and I strongly urge that this right be retained in any bill that is sent to the President.

Most importantly, this bill gives all of these protections to ALL Americans in managed health care plans, not just a few. All 170 million Americans in managed health plans deserve the same protections—no matter what State they live in.

As someone who comes from a business background, I understand the concerns of employers. Some of my colleagues on the other side have claimed that our bill will increase health care costs so much that it will make it impossible for employers and families to afford coverage. But the Congressional Budget Office reported that the patient protections in our bill will only increase premiums by 4.2 percent over 5 years. This translates into only $1.19 per month for the average employee. CBO also found that the provision to hold plans accountable—the provision the other side opposes the most and claim would cause health care costs to skyrocket—would only account for 40 cents of that amount. An independent study by Coopers and Lybrand indicates that the cost of the liability provisions is potentially less than that, estimating that premiums would increase between three and 13 cents a month per enrollee, or 0.03 percent.

I believe this bill meets the President’s principles for a real Patients Bill of Rights, and I hope that when the Senate passes its bill, we can come together and send a bill to the President he will sign. The time has come to end this debate and finally act to protect patients. There is no reason whatsoever to continue to allow health plans to skim on quality in the name of saving profits. Patients have been in the waiting room long enough. It is time for the Senate to act and make sure they receive the health care they need, deserve, and pay for.

In conclusion, Mr. President, the lobbying on this bill has been intensive. There’s been a great deal of coverage in recent weeks about the powerful interests that have collided over whether the nation should have a Patients Bill of Rights, and what that bill should look like.

I think even the media has had a tough time figuring out which side of this debate has the power of the “special interests” on their side. Some have said the money is on the side of the McCain-Kennedy-Edwards bill, since interests supporting the bill include the American Association of Trial Lawyers, the American Medical Association, and labor unions like AFSCME.

Others say that the special interests are weighing in against the Patients Bill of Rights, because of the powerful business and insurance coalitions fighting to defeat this legislation. Where is the money in this debate? The answer is simple, there are donors on both sides. Wealthy interests aren’t aligned exclusively on one side or the other. So for the information of my colleagues and the public, I thought I would take a moment to call the bankroll by examining the donations the interests on both sides have given in the last election cycle.

I will start with massive effort to defeat this legislation, brought to us by a coalition of insurance and business interests that represents some of the most powerful donors in the campaign finance system today.

Opposition to McCain-Edward-Kennedy is being spearheaded by the Health Benefits Coalition. An analysis by the Center for Responsive Politics puts the cumulative donations of the members of the Health Benefits Coalition at $12.9 million in the last election cycle. That figure includes soft money, PAC money and individual contributions made by the members of the Coalition.

The Coalition includes corporate members such as Blue Cross/Blue

CONGRESSIONAL RECORD — SENATE

June 29, 2001
June 29, 2001

CONGRESSIONAL RECORD — SENATE

S7177

Shield, Aetna Inc., and Humana Inc. But perhaps more importantly, the Coalition also includes major business and insurance associations. These organizations include the Chamber of Commerce, the Business Roundtable, the American Association of Health Plans, the American Medical Association, the National Association of Insurance Companies, the National Retail Federation, the National Restaurant Association, and the Food Marketing Institute, to name just a few. And of course whenever organizations like these join together in a legislative fight, they carry with them the collective clout of all the major political donors they represent.

The Health Insurance Association of America is an enormous coalition of the insurance industry. The insurance industry itself gave nearly $40.7 million in PAC, soft, and individual donations in the 2000 election cycle.

The American Association of Health Plans, the trade association for HMOs and their parent organizations, reported a total of nearly $5 million on lobbying in 1999 alone. According to a recent New York Times article, AAHP has budgeted $3 to $5 million to make their case against the Patients' Bill of Rights, and they are willing to spend whatever it takes," unquote, to get the job done.

The Business Roundtable also has spent money on an ad campaign against the bill, and so has the Health Benefits Coalition itself.

The cumulative clout of these expenditures, lobbying expenditures, soft money, PAC money and ad campaigns, from some of the biggest and most powerful organizations in Washington, hasn't gone unnoticed. This is an all-out blitz.

And this bankroll wouldn't be complete without a description of some of the interests giving their support to provisions in this bill: The American Medical Association, the Association of Trial Lawyers of America, and labor unions, including the American Federation of State, County and Municipal Employees.

According to the Center for Responsive Politics, AFSCME gave more than $2.5 million in soft, PAC and individual contributions in the last election cycle. The Association of Trial Lawyers of America gave more than $3.6 million in PAC, soft and individual contributions during that same period, and the AMA gave more than $2 million.

We don't know yet whether the will of the people will be heard above the din of lobbying calls, TV ad blitizes and the cutting of soft money checks to the political parties. I hope we pass a strong Patients' Bill of Rights. But whatever the outcome of this bill, we have to ask ourselves if this is the way we want to legislate, and the way we want our democracy to function. I think when the public hears that this debate pits wealthy interests against each other in a legislative fight, they will carry with them the collective clout of all the major political donors they represent.

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bill, you would think that any employer who offers health coverage will be sued. I would like to take this opportunity to clarify some of the facts.

The Bipartisan Patient Protection Act protects employers with a strong shield of liability. It makes the employer accountable when he or she directly participates in health treatment decisions. The bill also clearly states that employers cannot be held responsible for those managed care companies. The few companies that participate in decisions to deny a health care service to a patient. This only occurs in about five percent of businesses—generally those large enough to run their own health plan. Those few companies that deny access to care would be held liable.

The McCain-Kennedy Patients Bill of Rights legislation creates a mechanism by which to enforce the very patient protections it provides. Managed care insurers can easily avoid any liability, as long as they act responsibly and ensure that their patients receive the quality medical care prescribed for them by their physicians.

Let’s be clear about another issue. As chairman of the Small Business Committee, I am asking the Senate to consider the substantial challenges small businesses face in providing employee benefits while holding down costs. I understand the concerns small business owners have over the Kennedy-McCain bill’s potential to increase costs. The logic here is simple. If employers act like HMOs, it is only fair that they hold to the same accountability standards. For employers who do not directly participate in medical decisions, the time for negotiations has passed. The Senate should pass a bipartisan Patients Bill of Rights legislation.

The McCain-Kennedy Patients Bill of Rights legislation includes liability provisions similar to the bipartisan patient protection legislation passed in the Senate. Most importantly, I am hopeful that President Bush will hear the voices of Americans and not those of the special interest and their well-financed lobbyists, and sign this important legislation into law. The American people have spoken: the time for enactment of strong patient protections is long overdue.

Mr. KERRY. Mr. President, I am proud to support the bipartisan McCain-Kennedy Patients Bill of Rights. It is legislation that is long overdue. Time and again, we have heard in this chamber about the need to protect consumers. The McCain-Kennedy Patients Bill of Rights allows patients to sue their HMOs for the sole, laudable initiative of offering health insurance coverage to their employees. That is the intent of this legislation. The McCain-Kennedy Bill only holds accountable those employers who directly participate in health treatment decisions. Real people like Mrs. White are the reasons why there are liability provisions in the McCain-Kennedy Patients Bill of Rights: liability protections that allow patients to sue their health plans in state court. The real problem with the uniform liability standard is that it is only fair that they be held to the same accountability standards.

The McCain-Kennedy Patients Bill of Rights legislation that we have heard—not just in this chamber but across the television airwaves—is that this bill will cause insurance premiums to increase dramatically. Nothing could be further from the truth. According to the most recent estimate from the Congressional Budget Office, this legislation will cause premiums to increase an average of 4.2 percent a year. For the average employee, that equates to $1.19 per month in additional health insurance costs—a small price to pay for meaningful patients rights extended in this bill.

The President’s home State of Texas enacted a patients bill of rights—which we noted during the testimony of the McCaskill-Kennedy bill guarantees patients that they can receive the very health care they pay for. In exchange for their monthly premiums, patients deserve a guarantee that they can see their own doctor, visit a specialist, and go to the closest emergency room; a guarantee that their doctor can discuss the best options for treatment, not just the cheapest; and a guarantee that those doctors will follow their HMO. The McCain-Kennedy bill guarantees all of those rights.

When those rights are violated, and harm results from the delayed application of medical treatment, the McCain-Kennedy bill guarantees patients that they can hold their health plan accountable. And, what is all of the rights to access care hinge upon—the ability to hold a health plan liable if access to care is denied.

We have spent days on the floor of the Senate debating the issue of liability. But, the argument here is simple. In this country, if the decision of an individual or corporation results in harm or death to a consumer, the decision-maker is held accountable. That holds true for every individual, and for every company. Business people who make countless decisions daily that affect the health of millions of Americans, do not face this same accountability. The number of patients who are suffering as a result is staggering.

Every day, 35,000 patients in managed care plans have necessary care delayed. Too many of these patients pay the ultimate price for the callousness displayed by these managed care plans. I would like to share the story of one woman from my state of Massachusetts who lost her life after being denied care by her HMO.

Mrs. White was diagnosed with leukemia in October 1997, and was unable to find a bone marrow match for transplant. After 2 years of battling the disease, she went into remission. She then learned that Massachusetts General Hospital was working with a newly-developed mutation in her blood which would allow patients like herself, with less than perfectly-matched donors, to have bone marrow transplants. But, her HMO denied her care the day before she was due to be admitted to the hospital.

Six months later, Mrs. White enrolled in a new health plan which covered the costs of the transplant. However, during the 6-month impasse, Mrs. White fell out of remission, and her body was less able to sustain the new bone marrow. She died 3 months after the procedure was performed. Real stories like these demonstrate why HMOs must be held accountable for their decisions. Real people like Mrs. White are the reasons why there are liability provisions in the McCain-Kennedy Patients Bill of Rights—liability protections that allow patients to sue their health plans in state court. The real problem with the uniform liability standard is that it is only fair that they be held to the same accountability standards for employers who do not directly participate in these medical decisions should there be no liability.

I understand that many businesses remain wary of the safeguard against employer liability that are included in the Kennedy-McCain legislation. Negotiations are underway to strike a compromise and strengthen these safeguards so that we may arrive at a Patients Bill of Rights that receives the support. I join all of my colleagues in hoping that those negotiations bear fruit.

Another attack on this Patients Bill of Rights legislation that we have heard—not just in this chamber but across the television airwaves—is that this bill will cause insurance premiums to increase dramatically. Nothing could be further from the truth. According to the most recent estimate from the Congressional Budget Office, this legislation will cause premiums to increase an average of 4.2 percent a year. For the average employee, that equates to $1.19 per month in additional health insurance costs—a small price to pay for meaningful patients rights extended in this bill.
the 43 million Americans—the 15 percent of our population—who have no health care coverage at all. I challenge my colleagues on both sides of the aisle to continue the discourse on this critical issue and look forward to working towards extending health coverage to every American. We have passed this bipartisan Patients Bill of Rights.

The McCain-Kennedy Patients' Bill of Rights legislation has widespread support from patients groups and health care providers—the two parties that we should really be focused on in this debate. To date, over 500 health care provider and patients' rights groups have endorsed our bill.

An April 2001 Kaiser Family Foundation poll found that 85 percent of Americans supported a comprehensive Patients' Bill of Rights that includes provisions to hold HMOs accountable. Mr. President, patients and health care providers have spoken loud and clear. They insist that rights for patients is now, rights that our legislation will provide. I urge all of my colleagues to pass the McCain-Kennedy Patients Bill of Rights.

Mr. ORZINE. Mr. President, I rise to talk specifically about how important the Patients' Bill of Rights is to improving the mental health care Americans receive.

For far too long, mental health care consumers have been discriminated against in the health care system—subjected to discriminatory cost-sharing, limited access to specialists, and other barriers to needed services.

The Breaux-Frist plan—In contrast—does not allow access to out-of-network specialists.

In the end, this can result in more costly treatment. And for some illnesses, the longer the duration or the greater the severity of episodes, the harder to treat and more intractable the disease becomes.

Finally, the McCain-Edwards-Kennedy proposal, unlike Breaux-Frist, provides the right to a speedy and genuinely independent external review process when care is denied.

Let me just tell the personal story of a constituent of mine to illustrate the importance of these protections. Earlier this year, a mother in Gloucester County wrote to me about problems she had encountered getting treatment for her daughter. Her teenage daughter had attempted suicide, and been hospitalized for 8 days. She was diagnosed with depression and borderline personality disorder, and both her physician and therapist recommended intensive outpatient therapy, called "partial care" therapy. But it shouldn't have to be like that for families like my constituent so poignantly wrote to me.

In sum, the Breaux-Frist plan is insulated from public input, it requires a genuine independent external review process, and it will provide people access to the mental health care services that families need and deserve. The results have often been tragic.

Mr. HARKIN. Mr. President, for too long, American families have been left in the waiting room while HMOs refuse to provide the health care services that families need and deserve. The results have often been tragic.

Now we are on the verge of a big victory for the American people—passing a meaningful Patients' Bill of Rights. S. 1052 represents the culmination of five long years of bipartisan work to ensure that patients in managed care get the medical services they need, deserve, and have paid for. We have debated this issue for years, negotiated differences of opinion to find common ground, and worked across party lines to develop the best bill possible.

S. 1052 truly represents the best of all our collective ideas and most importantly, meets the needs of the American people.

Let me say that again. This bill—the McCain-Edwards-Kennedy bill—meets...
the needs of the American people. And when you cut through the rhetoric and political posturing, that is what this debate is all about—guaranteeing the American people basic and fundamental health care rights.

One cornerstone of a meaningful Patients’ Bill of Rights is access to a swift internal review and a fair and independent external appeals process. Without a strong review system in place—where real medical experts make the decisions and not the HMO accounts department—other protections would be compromised.

Our amendment would strengthen the review system to ensure the integrity of the appeals process and protect patients by requiring that the appropriate health care professional makes the medical decision. It ensures that health care professionals who can best assess the medical necessity, appropriateness, and standard of care, make determinations regarding coverage of a denied service.

As currently drafted, S. 1052 only requires that physicians participate in the review process. While the bill does not prohibit non-physician providers from participating in a review at a physician’s discretion, it does not guarantee their involvement in relevant medical reviews.

I think we all agree that the intent of the appeals process is to put medical decisions in the hands of the best and most appropriate health care providers. In many cases, this will undoubtedly be a physician. However, when the treatment denied is prescribed by a non-physician provider, it is critical that the case be reviewed by a provider with similar training and expertise.

For example, when a 59-year-old man fell in his home, he experienced increased swelling, decreased balance, decreased range of motion, decreased strength and increased pain in his right ankle and knee. A physical therapy intervention plan would have included specific exercises to increase strength, range of motion, and balance—enabling the patient to better perform activities of daily living and to prevent further deterioration of his health.

A reviewer who was not a licensed physical therapist, and did not have the expertise, background, or experience as a physical therapist, denied physical therapy coverage.

With physical therapy intervention, the patient was severely limited in activity and spent significant time in bed. The time in bed resulted in further deterioration of the original problems and the development of wounds from the prolonged static position in bed.

A physical therapist reviewer would have recognized the importance of patient mobility while in bed to prevent bedsores and interventions to improve the patient’s function with his right ankle and knee to enable him to independently walk.

Utilizing health care professionals with appropriate expertise and experience in the delivery of a service that has been denied by a health plan guarantees beneficiaries the best possible review of their appeal.

My amendment is supported by a wide range of health care professionals, including:

- The American Association of Nurse Anesthetists,
- The American Chiropractic Association,
- The American College of Nurse Midwives,
- The American College of Nurse Practitioners,
- The American Optometric Association,
- The American Pharmaceutical Association,
- The American Physical Therapy Association,
- The American Podiatric Medical Association,
- The American Society for Clinical Laboratory Science,
- The American Speech-Language-Hearing Association,
- The National Association of Orthopaedic Nurses,
- The National Association of Pediatric Nurse Practitioners,
- The National Association of Social Workers and
- The Center for Patient Advocacy.

I do not believe that non-physician providers were deliberately excluded from the review process. In fact, just the opposite is true—I believe it was the intent to develop the best possible review process. However, unless my amendment is adopted, I worry that we will fall short of our shared goal of giving patient’s access to the best and most appropriate health care to which they are entitled.

Mr. McCONNELL. Mr. President, I rise today to discuss the patient protection legislation currently before the Senate. Over the past decade, as private health coverage has shifted from traditional insurance towards managed care, many consumers have expressed the fear they might be denied the health care they need by a health plan that focuses more on cost than on quality.

In response to these concerns, the Senate has considered several bills to provide sensible patient protections to Americans in managed care plans. During the last Congress, the Senate took at least 19 rollovers and passed two pieces of comprehensive patient protection legislation. Like many of my colleagues, I found these debates quite instructive, in that they called the Senate’s attention to the numerous areas where there already exists a great deal of bipartisan agreement.

I believe that every American ought to have access to an emergency room. No parent should ever be forced to consider bypassing the nearest hospital for a desperately ill child in favor of one that is in their health plan’s provider network. If you have what is sometimes referred to as a gag agreement, which prevents anyone from discussing the essential details of the patient’s medical care, I must ask you to consider a simple question: Why did you choose their provider network over the one that is right down the street?

I believe that every American ought to be entitled to see a pediatrician as their child’s primary care physician. This common-sense reform would allow parents to take their child to one of their child’s pediatricians without having to get a referral from their family’s primary care physician.

I believe a doctor should be free to discuss treatment alternatives with a patient and provide them with their best medical advice, regardless of whether or not those treatment options are covered by the health plan. Gag clauses are contractual agreements between a doctor and an HMO that restrict the doctor’s ability to discuss freely with the patient information about the patient’s diagnosis, treatment options, and medical condition.

We all agree that this practice is wrong and have voted repeatedly to prohibit it.

I believe that consumers have a right to know important information about the products they are purchasing, and health insurance is no different. Health plans ought to provide their enrollees with plainly written descriptions of the plan’s benefits, cost sharing requirements, and definition of medical necessity. This will ensure that informed consumers can make the health care choices that are in their best interests and hopefully prevent disputes between patients and their plans.

In addition, the following examples highlight areas of broad and bipartisan agreement: Cancer Clinical Trials—Health plans ought to cover the routine costs of participating in clinical trials for patients with cancer; Point of Service Options—Health plans for large employers ought to offer a point of service option so that patient’s can go to a doctor outside their plan’s network, even if it means paying a little more; Continuity of Care—We ought to ensure that pregnant and terminally ill patients aren’t forced to switch doctor’s in the middle of their treatment; Formulary Reform—Health plans ought to include the participation of doctors and pharmacists when developing their prescription drug plans, commonly known as formularies; and Self-Pay for Behavioral Health Services—Individuals who want to pay for mental health services out of their own pockets ought to be allowed to do so.

These are items for which there is broad support among Democrats, Republicans, the White House, and most importantly, the American people. While their may not be unanimous agreement on every detail, I believe these disagreements could be resolved in relatively short order.

This may lead one to ask one very important question. “If these ideas are so popular, why haven’t they already been enacted?”

The answer is very simple, lawsuits. The Kennedy-McCain bill insists on very new and costly laws. In my judgment, it is not worth the risk of abandoning the work that would have been done through the yellow pages under the word “attorney” is not what most Americans would call health care reform.

Simply put, I believe that when you are sick, you need to go to a doctor, not a lawyer. I am opposed to increasing litigation for the simple reason that it will drive up premiums, force
21,000 Kentuckians out of the health insurance market, prevent millions more uninsured from being able to purchase insurance, and aggravate an already seriously flawed medical malpractice system. I am opposed to exposing employers to endless waves of lawsuits, simply for doing what’s right by their employees and providing them with health insurance. We ought to herald these employers, not sue them. While I am pleased the Senate adopted Mrs. Snowe’s additional employer protections, I am still concerned that millions of Americans may lose access to the quality health care that their employers provide.

The proponents of these costly new liability provisions contend that you can’t hold plans accountable without expanding the right to sue employers and insurers. I couldn’t disagree more. The proper way to ensure that plans are held accountable is to provide strong, independent external appeals processes that patients receive the care they need. Far too many Americans are concerned that their health plan can deny them care. I believe that if a health plan denies a treatment on the basis that it is experimental or not medically necessary, a patient should have the opportunity to appeal that decision. The reviewer must be an independent, medical expert with expertise in the diagnosis and treatment of the condition under review. In routine reviews, the independent reviewer must make a decision within 30 days, but in urgent cases, they must do so in 72 hours. After all, when you are sick, don’t you really need an appointment with your doctor, not your lawyer.

As if driving 1.26 million Americans out of the health insurance market wasn’t reason enough to oppose the Kennedy-McCain bill, I am also strongly opposed to expanding liability because it exacerbates the problems in our already flawed medical malpractice system, and may be so passionate in my opposition to new medical malpractice lawsuits, if lawsuits were an efficient mechanism for compensating patients who were truly harmed by negligent actions. Unfortunately, the data shows just the opposite. In 1996, researchers at the Harvard School of Public Health performed a study of 51 malpractice cases, which was published in the New England Journal of Medicine. In approximately half of those cases, the patient had not even been harmed, yet in many instances the doctor settled the matter out of court, presumably just to rid themselves of the nuisance and avoid lawyer’s fees and litigation costs. In the report’s conclusion, the researchers found that “there was no association between the occurrence of an adverse event due to negligence or an adverse event of any type and payment.” In everyday terms, this means that the patient’s injury had no relation to the amount of payment received or even whether or not payment was awarded.

These lawsuits drag on for an average of 64 months—that is more than 5 years. Even if at the end of this 64 months, only 43 cents of every dollar spent on medical liability actually reaches the victims of malpractice, source: RAND Corporation, 1985. Most of the rest of the judgement goes to the lawyers. That is right, over half of the injured persons are grabbed by the lawyers. Why would anyone want to expand this flawed system, which is so heavily skewed in favor of the personal injury lawyers?"
I believe the Thompson amendment is important in a number of ways. It will help curb unnecessary lawsuits. It provides patients with a fair review process. And most importantly, it codifies current law by allowing patients to file who are, in the belief when they need immediate care.

The Thompson amendment will not only protect the rights of patients but will also improve the McCain-Kennedy legislation.

As far as employer liability is concerned, the language of the McCain-Kennedy legislation was completely unacceptable. The bill claimed to limit federal or state causes of action against employers. But at the same time, the McCain-Kennedy bill specifically excluded any cause of action against an employer if such person or persons directly participated in the consideration of a claim for benefits and in doing so failed to exercise ordinary care. But at the same time, the McCain-Kennedy bill specifically excluded any cause of action against a doctor or hospital.

I think the Snowe-DeWine amendment and the Frist-Breaux-Jeffords legislation are a step in the right direction. The Snowe-DeWine language includes protections for employers who delegate plan decision making to a third party. It helps strengthen the definition of the designee decision maker so that some employers will not be unfairly exposed to liability. However, other employers would not be protected. I am serious when I say this could result in employees losing health coverage. Employers will not want to choose between offering health insurance to their employees and opening themselves up to liability and huge court costs.

I find it ironic that my colleagues on the other side of the aisle, who always claim they are trying to find ways to lower the uninsured population, are actually pressing for legislation that will dramatically increase the uninsured population.

And if you don’t believe me, talk to any expert who is not a trial lawyer because the message is loud and clear that unless the bill is improved, health coverage will be severely jeopardized, and employees will lose their insurance. Is this the result that we want, especially in legislation that claims to be a Patients’ Bill of Rights? I think not.

As far as damage caps are concerned, the Frist-Breaux-Jeffords legislation is a step in the right direction. The McCain-Kennedy language is not.

The problem with the current McCain-Kennedy legislation is that it allows patients to go both to federal and state court to collect damages. For federal causes of action, economic and non-economic damages are unlimited. And even though the bill’s proponents claim there are no punitive damages provisions, as a former medical malpractice attorney, I know punitive damages when I see them.

Supporters of the McCain-Kennedy approach claim their bill doesn’t allow punitive damages in federal court. That is absolutely not true. Under their bill, a defendant in federal court can be hit with up to $5 million in “civil assessment” damages. Let’s call it like it is. The purpose of the civil assessment is to punish providers, plain and simple. It doesn’t place any limits on state law damages. It is very apparent to everyone in this chamber that the trial lawyers have been principally involved in drafting these liability provisions and they have done so with their own interests in mind. This provision is simply not in the best interest of the American people.

The McCain-Kennedy language allowing for unlimited damages is unworkable. Economic and non-economic damages are uncapped. In my opinion, non-economic damages should be capped.

Another issue that is extremely important is class action. The McCain-Kennedy language had no restrictions on class actions on its newly permitted state causes of action. The newly created federal causes of action for damages. Fortunately, the DeWine language attempts to restrict the litigation nightmare that would have resulted from the McCain-Kennedy language.

Finding common ground on these issues—exhaustion of appeals, employer liability, caps on damages and class action is crucial to the success of thePatients’ Bill of Rights legislation. We need to do this in a way that is in the best interest of patients, not trial attorneys. I am confident that if we are all willing, we can make these provisions legally sound. We have spent far too many years on this issue not to do it right. We have a real opportunity to pass meaningful patients’ rights legislation. Let’s not squander this opportunity by acting expeditiously.

Mr. CORZINE, Mr. President, I rise to speak on what has been an issue touched upon by many people during this debate on the Patients’ Bill of Rights, the problem of the uninsured.

Let me first say that I am very pleased that today we are passing a strong, enforceable Patients’ Bill of Rights.

I commend the bill’s authors, Senators MCCAIN, EDWARDS and KENNEDY, for the tremendous job they have done in drafting a bipartisan bill that will provide strong patient protections and curb insurance company abuses.

This legislation is an example of how, working together, we can improve the health care Americans receive. But it is just the first of many steps we should be taking to ensure that all Americans receive quality health care.

During the debate on the Patients’ Bill of Rights I have heard many Senators argue that this legislation will lead to more uninsured Americans. In deed, some of my colleagues have faulted the support I gave to doing anything to help the uninsured.

As someone who have been talking about this issue for several years, I am thrilled to hear that my colleagues are concerned about the problem of the uninsured.

It is a national disgrace that 42 million Americans do not have health insurance.

What are the uninsured? They are 17.5 percent of our nonelderly population. A shameful 25 percent are children. The majority—83 percent—are in working families.

The consequences of our Nation’s struggling uninsured population are devastating. The uninsured are significantly more likely to delay or forgo needed care. The uninsured are less likely to receive preventive care. Delaying or not receiving treatment can lead to more serious illness and avoidable health problems. This in turn results in unnecessary and costly hospitalizations. Indeed, my own state of New Jersey struggles to deal with the costs of charity care provided to the uninsured.

In the last few years, the first time in a decade we saw a slight decrease in the uninsured. But we still have so far to go.

I believe that health care is a fundamental right, and neither the Government nor the private sector is doing enough to secure that right for everyone.

We ignore the issue of the uninsured at our peril and at a great cost to the quality of life—and to the very life—of our citizens.

This is why I am developing legislation that will provide universal access to health care for all Americans.

My legislation will have several main components:

Large employers would be required to provide health coverage for all their workers. The private sector must do its part—a minimum wage in America should include with it minimum benefits, among them health insurance. But unfortunately, the current system puts uninsured people at a disadvantage rather than providing health insurance at a disadvantage relative to the employers who do not.

Small businesses, the self-employed and unemployed would be able to buy coverage in the Federal Employee Health Benefit Program. If it is good enough for Senators, it is good enough for America.

Those who are between the ages of 55 and 64 would be able to buy-in to the Medicare program.

We would provide help to small businesses and to low-income workers.

But although I am passionate about universal access to health care, I realize we can’t get there yet. Not because the popular will is not there, but because the political will isn’t.

So I support incremental changes, starting with the most vulnerable populations, and building on Medicaid and CHIP, success public programs.

I am working on a proposal that would expand Medicaid to cover all persons up to 200 percent of the Federal poverty level—an efficient way to reach nearly two-thirds of the uninsured.
I am also a strong supporter of the Family Care proposal, which would cover the parents of children already enrolled in the CHIP program. My own state of New Jersey is in fact leading the way on the issue of enrolling parents with their kids.

Finally, I was pleased to be an original cosponsor of Senator Bingaman’s bipartisan legislation, the Start Healthy, Stay Healthy Act, which would expand coverage for children and pregnant women. It is based on the common-sense principle that children deserve to start healthy and stay healthy.

I often say that we are not a nation of equal outcomes, but we should be a nation of equal beginnings.

Until we give all Americans access to health care, however, we cannot live up to that promise.

But although we cannot get to universal access this year, I believe we can and should be doing all that we can to make progress.

In conclusion, I am heartened that in this debate on the Patient’s Bill of Rights so many of my colleagues have expressed concern about the problem of the uninsured. Indeed, I am hopeful that we have turned a corner on this critical issue.

As we move forward, I welcome the opportunity to work with any of my colleagues, on either side of the aisle, to find ways to significantly address the problem of the uninsured. There can be no greater purpose to our work in the Senate.

Mr. Lieberman, Mr. President, I rise to speak about the McCain-Edwards-Kennedy Patients’ Bill of Rights. It has been 4 years since the first managed care reform bill was introduced in Congress. After years of unyielding and unproductive debate, we came together this week to find common ground for the common good, and this bill will significantly improve the quality of medical treatment for millions of American families. We have worked very hard to get to this day, and with the unflagging commitment of my colleagues on both sides, we have produced a bill that I am very proud to support.

This bill does more than just provide new assurances to patients. It will provide a whole new framework for the delivery of health care in this country, helping to transform our managed care system from one in which health plans are immune for the life and death decisions they make every day to a more fair and accountable system for America’s families.

The purpose of this legislation has broad—and I emphasize broad—bipartisan support. According to a CBS News poll from 6/2/01, 90 percent of Americans support a Patients’ Bill of Rights.

Two years ago, 68 Republicans in the House of Representatives voted for the Norwood-Dingell Patients’ Bill of Rights legislation that allowed patients to sue HMOs if they are denied a medical benefit that they need. The Ganske-Dingell bill in the House of Representatives currently has strong support from both Democrats and Republicans. I urge my colleagues in the House to take up the Ganske-Dingell Patients’ Bill of Rights and pass it without delay so that we can send a bill to the president for signature.

We need to enact a patients’ bill of rights now. Every day that goes by, nearly 50,000 American people with private insurance have benefits delayed or denied by their health plans. These denials of health plans impact thousands of families at times of great stress and worry. Our most fundamental well-being depends on our health. Anyone who has had a sick family member can tell you of the anxiety and experience during a medical emergency or prolonged illness. It is our obligation and within our ability to make it easier for these families. This bill will do just that.

Opponents of this legislation express concern that once this bill is signed into law, we will see a flood of lawsuits. I would like to point out that in the 4 years since Texas enacted legislation allowing patients to hold their health insurer liable for denying care, there have been very few lawsuits filed. Four million people in Texas are covered by that State’s patient protection law. Only 17 lawsuits have been filed.

The appeals process in this bill is fair and binding. With a strong and swift appeals process, patients should be able to receive the care they need, when they need it. The need for recourse in court should be minimal.

It was never the intent of this legislation to encourage more lawsuits. The sole purpose for this bill is to deliver health care to the people who need it. I remain hopeful that as it is the case in Texas, there will be very few lawsuits once this bill becomes law.

Rather, under this Patients’ Bill of Rights, patients will be able to receive the care they need and deserve with less delay and less dispute. No longer will a cancer patient have to worry about access to clinical trials for new treatments. No longer will a family with a sick child have to worry about access to a pediatric specialist. No longer will a pregnant woman have to worry about switching doctors mid-pregnancy if her doctor is dropped from a plan.

Doctors will be able to prescribe the care necessary for their patients without feeling pressured to make cost-efficient decisions. And managed care companies will be held responsible when their denials of care threaten the lives of patients.

In sum, under this legislation, our health care system will better reflect and respect our values, putting patients first and the power to make medical decisions back in the hands of doctors and other health care professionals.

We can all be proud of this outcome and the path we followed to get here. The Senate worked through a lot of complicated issues and problems, reconciling legitimate policy differences, and reached principled compromise where we could. The result is real reform, and a bill of rights that is right for America.

Mr. LEVIN. Mr. President, I support the strong, enforceable Patients’ Bill of Rights which I will be voting for today. Every year, the American people are going to vote on today. After years of consideration, and a hard legislative battle over the last few weeks, the bipartisan vote which this bill is about to receive on final passage reflects the overwhelming support the bill has from the American people.

The Patients’ Bill of Rights assures that medical decisions will be made by doctors, nurses and hospitals, not by someone in an insurance office somewhere with no personal knowledge of the patient and no professional background to make medical judgments. It guarantees access to needed health care specialists. It requires continuity of care protections so that patients will not have to change doctors in the middle of their treatment. And, the bill provides access to a fair, unbiased and timely internal and independent external appeals process to address denials of needed health care. This legislation will hold HMOs accountable for their decisions like everyone else in the United States. The Patients’ Bill of Rights also assures that doctors and patients can openly discuss treatment options and includes an enforcement mechanism that ensures these rights are real.

I have taken a big step forward today on comprehensive managed care reform for 190 million Americans. I am hopeful that the House of Representatives will again pass a real Patients’ Bill of Rights and that the President will reconsider his stated intention to veto the legislation.

Mr. McCAIN. Mr. President, I thank all my colleagues, both supporters and opponents of our legislation, for their patience, their courtesy, and their commitment to a full and fair debate on the many difficult issues involved in restoring to doctors and HMO patients the right to make the critical decisions that will determine the length and quality of their lives.

I think we are all agreed on this one premise, that the care provided by HMOs has been inadequate in far too many instances. This failure is attributable to the fact that virtually all the authority to make life and death decisions has been transferred from the people most capable of making medical decisions to those people most capable of making business decisions. I do not begrudge a corporation maximizing its profits, exercising due diligence regarding its fiduciary responsibility to its shareholders. The corporate bottom line is their primary responsibility, and I respect that. But that is why, we must not grant business decision makers competing responsibility, especially when that secondary responsibility is the life and health of our constituents. I know
that even the opponents of our legislation are agreed on returning more authority to doctors and their patients, and addressing many of the most distressing failures of managed health care. Where we differ, and differ significantly, is over the questions of remedies for negligence on the part of the insurers, and though we have tried to find common ground we are not there yet. But the Senate, seldom acts in perfect unison, and the majority has spoken in support of our legislation. I am grateful for that, for I come to appreciate just how important this matter is to the American people, and I am proud of the Senate for taking this step in addressing the people just concerns. We have made considerable progress in reconciling differences of opinion on several issues, from employer liability to class action suits to establishing a reasonable cap on attorney fees, and exhausting all other remedies before going to court. We have agreed small, but important issues like protecting from litigation doctors who volunteer their time and skill to underprivileged Americans. I want to thank all senators involved in reaching those compromises—Senators DeWine, Snowe, Lincoln, Thompson, and Nelson especially, for their diligence and good faith. I know they want to pass a bill that the President will sign, as do I, and they have worked effectively toward that goal.

I know that we have outstanding differences remaining. I know that the President is not persuaded that the legislation that we have adopted today is the best remedy for the urgent national problem we all recognize. I pledge to continue working with the administration and with our friends on the other side of the Capitol to see if we might yet reach common ground on all the important elements of this legislation. And if that can get there, and I appreciate the President’s dedication to that same end.

I thank the sponsors of this legislation, Senator Edwards, the always fornice of Rights was introduced in the House . . . and nearly 2 years since the last that medical care they have paid for. It says you have the right to go to the closest emergency room, and the right to see a specialist. This bill achieves every goal we set for it over the past 5 years, and we owe that to the stewardship and commitment of Senators McCain, Edwards, and Kennedy. During these last 10 days, they have stood together—Republicans and Democrats—and rejected amendments that would have made this bill unworkable. And we have accepted amendments that made it better. I am grateful for the leadership of Senators Lott and Daschle, and the assistant majority leader, Senator Reid, for their skill, courtesy, and fairness in managing this debate. Finally, let me thank those who do most of the work around here but get the smallest share of the credit for our accomplishments, our staffs. I want to thank the chairman of the Commerce Committee, Mark Buse, committee counsel Jeanne Bumpus, and most particularly, my health care legislative assistant, Sonya Sotak for their extraordinary hard work, and talent.

This has been a good, long, open, and interesting debate, distinguished by good faith on all sides. It has been privilege to have been part of it. We have achieved an important success today in addressing the health care needs of our citizens. We have much work to do, and I want to continue working with other Members, our colleagues in the other body, and with the President and his associates to make sure that we will enact into law these important protections for so many Americans who have waited for too long for them. We have been negligent in addressing this problem, but today we have taken an important step forward in correcting our past mistake.

With a little more good faith and hard work, we will give the American people reason to be as proud of their government as I am proud of the Senate today. Mr. Daschle, Mr. President, it has been more than 5 years since we began this effort to make sure that Americans who have health insurance get the medical care they have paid for. But medical advances are useless if health care in all of human history are signed to weaken the protections in this bill.

The bill guarantees that people who have health insurance can get the care their doctors say they need and deserve.

It ensures that doctors, not insurance companies, make medical decisions.

It guarantees patients the right to see another doctor first to get permission.

It guarantees that parents can choose a pediatrician as their child’s primary care provider.

It allows families and individuals to challenge an HMO’s treatment decisions if they disagree with them.

This bill gives families a way to hold HMO’s accountable if their decisions cause serious injury or death—because rights without remedies are no rights at all.

This bill achieves every goal we set for it over the past 5 years, and we owe that to the stewardship and commitment of Senators McCain, Edwards, and Kennedy.

This bill gives families a way to hold HMO’s accountable if their decisions cause serious injury or death—because rights without remedies are no rights at all.

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I also want to thank Senators Nickles, Lincoln, and Jeffords for their principled opposition.

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hearing expressed by many opponents of this bill for the growing number of Americans who have no health insurance. We agree that this is a serious problem, and look forward to working with those Senators to address it as soon as possible.

The effort to pass a Patients’ Bill of Rights now returns to the House.

Last year, 68 House Republicans joined Democrats to pass a strong patient protection bill very much like this one. We urge our colleagues in the House to revisit the special interests one more time. Together, we can send a strong, enforceable Patients’ Bill of Rights to President Bush.

We hope that when that happens, the President will reconsider his threatened veto. We hope he will remember the promise he made last fall to the American people to pass a national Patients’ Bill of Rights.

Texas has proven that we can protect patients’ rights—without dramatically increasing premiums. It is time—it is past time—to pass a Patients’ Bill of Rights to protect all insured Americans.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass?

Mr. STEVENS. Mr. President, I ask for the yeas and nays. The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from New Mexico (Mr. DOMENICI), the Senator from Texas (Mr. GRAMM), the Senator from Alaska (Mr. MURKOWSKI), the Senator from Mississippi (Mr. LOTT) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 36, as follows:

[Rollcall Vote No. 220 Leg.]

YEAS—59

Voting for the yeas—

Mr. NICKLES. The PRESIDING OFFICER. Without objection, it is ordered.

AMENDMENT NO. 869

Mr. REID. Mr. President, on behalf of Senator KENNEDY and Senator GREGG, the managers of this bill, and me, I send this managers’ amendment to the desk and ask unanimous consent it be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 869) was agreed to.

[The text of the amendment is located in today’s RECORD under “Amendments Submitted.”]

UNANIMOUS CONSENT REQUEST—H.R. 1668

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of H.R. 1668, which is now at the desk; that the bill be read three times, passed; and the motion to reconsider be laid upon the table with no intervening action.

Mr. NICKLES. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. NICKLES. Reserving the right to object, I will object on behalf of other Members. This bill has not yet been referred to committee. I personally have no objection to the bill, and I expect I will be supportive of it, but it should be referred to the committee so interested Members who have an interest in this particular issue can vet it, maybe improve it, maybe we can pass it. I hope we can pass it as expeditiously as possible.

At this time I object.

Mr. NICKLES. The PRESIDING OFFICER. Objection is heard.

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At this time I object.

Mr. NICKLES. Mr. President, I share my colleague’s enthusiasm, both for President Adams and also for David McCullough’s book. He is a great historian. I have not finished it yet. I started it. I look forward to completing it and learning a little bit more about the history of one of America’s great Presidents, one of our real founding patriots.

Again, this is going to be referred to the Energy Committee where I and others, I think, will try to be very supportive in a very quick and timely fashion so the entire Senate can, hopefully, vote on this resolution.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN. Madam President, I ask unanimous consent the order for the quorum call be dispensed with, and I ask unanimous consent to speak for 10 minutes in morning business.

As a member of that committee, I would like to take a few moments and make a few comments about my experience with the blue slip—in essence, what I think about it.

For those who do not know what the blue slip is, it is a process by which a Member can essentially blackball a judge nominated by his or her State, so I think that Member has some reason to do so.

Why would I object so much? I object so much because there is a history of this kind of thing. Historically, many private clubs and organizations have enabled their board of directors to deliver what is called a blackball to keep out someone they don’t want in their club or organization. We all know it has happened. For some of us, it has even happened to us.

The usual practice was, and still is in instances, to prevent someone of a different race or religion from gaining access to that organization or club. This is essentially what the blue slip process is all about.

The U.S. Senate is not a private institution. We are a public democracy. I have come to believe the blue slip should hold no place in this body. At the very least, the use of a blue slip to stop a nominee, to prevent a hearing and therefore prevent a confirmation, should be made public. I am pleased to support my chairman, PAT LEAHY, and the Judiciary Committee in that regard.

Under our current procedure, though, any Member of this Senate, by returning a negative blue slip on a home State nominee, or simply by not returning the blue slip at all, can stop a
nomination dead in its tracks. No reason need be given, no public statement need be made, no one would even know whom to blame. With a secret whisper or a backroom deal, the nomination simply dies without even a hearing. This is just plain wrong.

I have watched the painful process over the last 9 years. During 6 of those years, the blue slip itself contained the words, “no further proceedings on this nominee will be scheduled until both blue slips returned by the nominee’s home State Senators.” As a result, I saw nominees waiting 1, 2, 3, even 4 years, often without as much as a hearing or even an explanation as to why the action was taken. These nominees put their lives on hold. Yet they never have a chance to discuss the concerns that may have been raised about them. These concerns remain secret and the nomination goes nowhere.

As a member of the Judiciary Committee, I believe our duty is either to confirm a nominee based on an informed judgment that he or she is either fit or not fit to serve; to listen to concerns and responses, to examine the evidence presented at a hearing, and to have a rationale for determining whether that nominee qualifies to be a district court judge or circuit court judge or even a U.S. Supreme Court Justice. That duty, in my view, leaves no room for a secret block on nominees by any Member which prevents their hearing and confirmation.

I believe in the last three Congresses, based on information I have been able to come upon, that the blue slip has been used at least 21 times. Consider this: An individual graduates college with honors, finishes law school at the top of the class; he or she may even clerk for a prestigious judge or join a large law firm, or maybe practice public interest law or even serve as staff of the Committee. In fact, an individual nominee can spend years of his or her life honing skills and developing a reputation among peers, a reputation that finally leads to a nomination by the President of the United States to a Federal court.

This must be the proudest day of his or her life. Then the nominee just waits. First for a few weeks. He or she is told things should be moving shortly but the Senate sometimes takes a while to get moving. Then the months start to go by, and maybe the friend or associates make some inquiries as to what could be wrong. They don’t hear anything, so the nominee is told just to wait a little longer; things will work themselves out.

I have had nominees call me and say: I have children in school. We need to move. Shall we do it? I don’t know what to do. Do I continue my law practice?

A year passes with still no hearing or explanation; finally, the second year, and maybe the third, or even the fourth, if one is “lucky” enough to be renominated in the next session. The time goes by without so much as a word as to why the nomination has not moved forward.

Simply put, the nominee has been blackballed by a blue slip, and there is nothing that can be done about it—no one to hold accountable.

I believe that if a Member wants to use a blue slip to stop a nominee from moving forward, that blue slip should be public. And I also believe that the Member should be prepared to appear before the Judiciary Committee and explain why the Senate should not consider the nominee and hold a hearing.

Making the blue slip public is no guarantee that a nominee will receive a hearing. It is no guarantee that an up or down vote will ever be held. But at least the nominee will have the chance to see who has the problem, and what that problem is. In many cases, a nominee may choose to withdraw. In others, perhaps a misunderstanding can be cleared up. Either way, the process will be in the open, and we will know the reasons.

I believe that many members of this Senate did not even realize they held the power of the blue slip until just recently.

In my view, the rationale behind the blue slip process is faulty. The process was designed to allow home state Senators—who may in some instances know the nominee better than the rest of the Senate—to have a larger say in whether or not a judge advances forward. More often than not, however, this power is and will be used to stop nominees for political or other reasons having nothing to do with qualifications.

As a matter of fact, the Member who uses the blue slip, who doesn’t send it in, or sends it in negatively, may never have even met the nominee. If legitimate reasons to defeat a nominee do exist, those reasons can be shared with the Judiciary Committee in confidence and decisions can be made based on that information—by the entire Committee.

The blue slip process as it now stands is open to abuse. I would join with those—I am hopeful there are now those—on the Judiciary Committee who would move to abolish the blue slip.

Before I conclude, I want to read from a recent opinion piece by G. Calvin Mackenzie, a professor at Colby College and an expert on the appointment process. In the April 1, 2001 edition of the Washington Post, Mackenzie wrote:

The nomination system is a national disgrace. It encourages bullies and emboldens demagogues, silences the voices of responsibility, and nourishes the lowest forms of partisan combat. It uses innocent citizens as pawns in politicians’ petty games and stains the reputations of good people. It routinely violates fundamental democratic principles, undermines the quality and consistency of public management, and breaches simple decency.

I find myself in agreement with every word in that quote. It is quite an indictment of our nominations process. On both sides of the aisle, we hear: Well, they did it, so we are going to do it. Well, they blocked our nominee, so now we will block their nominee.

I don’t believe that has any merit whatsoever. I believe at some point we have to stop this cycle. At some point, nominees have the right to go to a Senate Judiciary Committee, go promptly or as promptly as they can to go to a hearing, have the questions asked, and we do our duty which we took our oath to do, which is to make the judgment whether that nominee qualifies to be a Federal court judge or district court judge.

I make these remarks to say that this is one Member of the Judiciary Committee who will happily vote to do away with the blue slip.

Thank you very much. I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clock will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. DASCHLE. Madam President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXPLANATION OF ABSENCE

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Pursuant to rule 6, paragraph 2, I ask unanimous consent the Senator from Alaska, Mr. Murkowski, be granted official leave of the Senate until July 9.

The PRESIDING OFFICER. Without objection, it is so ordered.

FORMAL OPENING OF THE NATIONAL JAPANESE AMERICAN MEMORIAL

Mr. AKAKA. Mr. President, earlier this afternoon, a few short blocks from this Chamber and in the shadow of the Capitol, hundreds of people gathered to celebrate the formal opening of the National Japanese American Memorial honoring the loyalty and courage of Japanese Americans during the Second World War.

As a World War II veteran and a native of Hawaii, I am well-acquainted with the exceptional contributions of Japanese-Americans to the war effort, both at home and abroad. The battlefield exploits of the 442nd, 100th, and the MIS immediately come to mind. Less known but equally deserving of
In closing, I urge all Americans, during this next week as we celebrate our freedom and our great history, to thank our soldiers who gave their lives and their freedom to fight for our nation. I thank them and express my support that they will be helped and protected, I will fight for them that they fought for me, my children, and all other Americans.

RETIREMENT OF VICE ADMIRAL
JAMES F. AMERAULT

Mr. LOTT. Mr. President, it is with great pleasure that I rise to take this opportunity to recognize the exemplary service and career of an outstanding naval officer, Vice Admiral James F. Amerault, upon his retirement from the United States Navy at the conclusion of more than 36 years of honorable and distinguished service. It is my privilege to commend him for outstanding service to the Navy and our great nation.

Vice Admiral Amerault embarked on his naval career thirty-six years ago, on the 29th of June 1965. In the years since that day, he has devoted great energy, expertise, and talent to Japan, and remembers all those who were dislocated or interned from 1942 to 1945. In addition, the memorial draws on a few striking elements to cause one to meditate on the wartime experiences of Japanese Americans. The crab sculpture by Nina Akamu, a Hawaii-born artist, speaks to the prejudice and injustice confronted by Japanese Americans, and foremost, the memorial honors the memory of those who gave their lives in defense of our freedom and liberty and remembers all those who were dislocated or interned from 1942 to 1945.

I congratulate the National Japanese American Memorial Foundation for the tremendous effort that went into organizing and building the Memorial to Patriotism by the Japanese Americans from around the country donated funds to build the memorial. Over 2,000 Hawaii residents contributed approximately $1 million to this worthy project. The completed memorial is both an educational tool and foremost, the memorial honors the memory of those who gave their lives in defense of our freedom and liberty and remembers all those who were dislocated or interned from 1942 to 1945. In addition, the memorial draws on a few striking elements to cause one to meditate on the wartime experiences of Japanese Americans. The crab sculpture by Nina Akamu, a Hawaii-born artist, speaks to the prejudice and injustice confronted by Japanese Americans, and foremost, the memorial honors the memory of those who gave their lives in defense of our freedom and liberty and remembers all those who were dislocated or interned from 1942 to 1945.

On this Independence Day, as we honor and appreciate America's freedom, we cannot help but think of those who served our country. Freedom, indeed, is not free. The price is immeasurable. I hope the Prime Minister will understand, as I know he does, the value we place upon our veterans—the very people who fought and paid the price.

Our country appreciates the decades of friendship the United States and Japan have shared. Often, we probably do not recognize as we should the value of our bilateral relationship with Japan. On many occasions, we get bogged down in trade disputes. But ultimately, we have found ways to resolve past trade differences, and I am confident we can address all current and future trade issues.

It is with this sincere hope and appreciation that I raise the memory of injustices perpetrated by private companies in Japan against American service members and find a resolution to this problem. There is no more appropriate time to open the door to this long overdue dialogue between the United States and Japan. This is a moral issue that will not go away. We must continue to build on this chapter in history. In so doing, we will fortify and continue our bilateral relationship with Japan.
During this tour he earned a coveted Shellback certificate for crossing the equator. He then reported as Chief Engineer on board USS Benner (DD 801) where he earned his first of three Navy Commendation Medals.

Several sea tours followed in steady progression. He was Executive Officer in USS Dupont (DD 941). He also was Executive Officer in USS Sierra (AD 18). He served as commanding officer of USS Nicholas (FFG 47) and commanding officer of USS Samuel Compers (AD 37). It is difficult to convey the challenges and hardships that were faced by this officer and his family during these many and arduous sea tours.

As Vice Admiral Amerault progressed in the Navy he served as Staff Combat Information Center Officer for Commander, Cruiser Destroyer Group TWO; and commanded Destroyer Squadron SIX, Amphibious Group FOUR, and the Western Hemisphere Group. Again, these were all difficult tours of tremendous responsibility that required an incredible commitment to duty and country.

VADM Amerault’s shore assignments have included Director, Navy Program Resource Appraisal Division and Executive Assistant to the Director, Surface Warfare Division on the staff of the Chief of Naval Operations.

His flag assignments have included Director, Operations Division, Office of Budget and Reports, Navy Comptroller; Director, Office of Navy Budget; and Director, Fiscal Management Division in the office of the Chief of Naval Operations.

His final tour in the Navy as Deputy Chief of Naval Operations (Fleet Readiness and Logistics) has demonstrated his brilliant logistics acumen. With dynamic leadership he has refocused the Navy’s logistics systems to more accurately meet the needs of the warfighter and the Navy of the future.

VADM Amerault is a graduate of the Naval Postgraduate School (MS Operations Research) and the University of Utah (MA Middle East Affairs and Arabic), and was the Navy’s 1986-87 Federal Executive Fellow at the RAND Corporation, Santa Monica, California.

As he ascended to the highest echelons of leadership in the Navy, Vice Admiral Amerault garnered many commendations that further highlight his stellar career. They include the Distinguished Service Medal; Legion of Merit (seven awards); the Bronze Star with V; the Meritorious Service Medal (two awards); the Joint Service Commendation Medal; the Navy Commendation Medal (two awards); and Vietnam, Desert Storm, and numerous other campaign medals.

Vice Admiral Amerault also has the distinction of being the Navy’s “Old Salt”—the active duty officer who has been qualified as an officer of the deck underway the longest.

Standing beside this officer throughout his superb career has been his wife Cathy, a lady to whom he owes much. She has been his key supporter, devoting her life to her husband, to her family, and to the men and women of the Navy family. She has traveled by his side for these many years. They are the epitome of the Navy family team.

From his early career at the Naval Academy, through Vietnam, the Gulf War, Kosovo and beyond—thirty-six years—Vice Admiral Amerault has served with uncommon valor. He is indeed an individual of rare character and professional excellence. A true Sailor! I am proud, Mr. President, to thank him on behalf of the United States of America for his honorable and most distinguished career in the United States Navy, and to wish him “fair winds and following seas”.

RECOGNIZING VOLUNTEER REFERRERS FOR THE 2001 SIGMA NU CHARITY BOWL

Mr. LOT T. Mr. President, recently the Epsilon Xi Chapter of Sigma Nu at the University of Mississippi celebrated the eleventh anniversary of the Charity Bowl in Oxford, Mississippi. Founded in 1989, the Sigma Nu Charity Bowl plays an important role in the lives of men and women, who from accidents or injuries have been permanently paralyzed. Since 1990, over $500,000 has been raised to help these individuals.

Throughout the years, the Epsilon Xi Sigma Nu Chapter has become one of the largest college philanthropy events in the nation. Every year, Sigma Nu competes in a football game against another fraternity from Ole Miss or another university. It has become an annual event that the citizens of Oxford, the parents of the players, and the Ole Miss community enjoy each year. This year’s recipient was a very deserving young man named James Havard, who enjoyed watching Sigma Nu defeat Phi Delta Theta 18-13. I would like to recognize some very special men who generously gave their time and talents in order to make the Charity Bowl a great success. Steve Freeman, Michael Miles, Kevin Roberts, Scott Steenson, and Michael Woodard are to be commended and honored for their efforts in serving as volunteer referees for the charity bowl football game. They graciously took time out of their busy schedules in order to make the game enjoyable for the players and the fans, but more importantly they gave James Havard an opportunity to enjoy a better life.

These men belong to the Professional Football Referees Association Charities, PFRA. The PFRA is also very involved in helping out other charitable organizations such as the Make-A-Wish Foundation. This distinguished organization has been very helpful in getting aid to individuals like James, and they have given many people a chance to have a better life.

These men and the PFRA are to be commended for a job well done, and for their continued efforts in improving the lives of others.

THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

Mr. LEAHY. Mr. President, one of the most significant accomplishments of the 106th Congress was the Electronic Signatures in Global and National Commerce Act, commonly known as “ESIGN.” This landmark legislation establishes a Federal framework for the use of electronic signatures, contracts, and records, while preserving essential safeguards protecting the Nation’s consumers. It passed both houses of Congress by an overwhelming majority, and went into effect in October 2000.

I helped to craft the Senate version of the bill, which passed unanimously in November 1999, and I was honored to serve as a conference and help develop the conference report of what we achieved and the bipartisan manner in which we achieved it. It was an example of legislators legislating rather than politicians posturing and unnecessarily politicizing important matters of public policy.

Much of the negotiations over ESIGN concerned the consumer protection language in section 101(c), which was designed to ensure effective consumer consent to the replacement of paper notices with electronic notices. We managed in the end to strike a constructive balance that advanced electronic commerce without terminating or mangling the basic rights of consumers.

In particular, ESIGN requires use of a “technological check” in obtaining consumer consent. The critical language, which Senator WYDEN and I developed and proposed, provides that a consumer’s consent to the provision of information in electronic form must involve a demonstration that the consumer can actually receive and read the information. Companies are left with ample flexibility to develop their own procedures for this demonstration.

When the Senate passed ESIGN in June 2000, I expressed confidence that the benefits of a one-time technological check would far outweigh any possible burden on e-commerce. I also predicted that this provision would increase consumer confidence in the electronic marketplace.

One year later, the Federal Trade Commission and the Department of Commerce have issued a report on the impact of ESIGN’s consumer consent provision. In preparing the report, these agencies conducted extensive outreach to the community, technology developers, consumer groups, law enforcement, and academia. The report concludes:

Thus far, the benefits of the consumer consent provision of ESIGN outweigh the burdens of its implementation and use of electronic commerce. The provision facilitates e-commerce and the use of electronic records and
signatures while enhancing consumer confidence. It preserves the right of consumers to receive written information required by state and federal law. The provision also discourages identity theft and fraud by those who might fail to provide consumers with information the law requires that they receive.

Significantly, the consumer consent provision providing information as well as consumers. The report states that businesses that have implemented this provision are reporting several benefits, including “protection from liability, increased revenues resulting from increased consumer confidence, and the opportunity to engage in additional dialogue with consumers about the transactions. The technological check has not been significantly burdensome, and “[t]he technology-neutral language of the provision encourages creativity in the structure of business systems that interface with consumers, and provides an opportunity for the business and the consumer to choose the form of communication for the transaction.”

The report also finds that ESIGN’s consumer safeguards are helping to prevent consumer fraud and theft, which is critical to maintaining consumer confidence in the electronic marketplace.

ESIGN is a product of bipartisan cooperation, working well for the country. We should learn from experience as we take up new legislative challenges.

IN MEMORY OF OLIVER POWERS

Mr. NICKLES. Mr. President, I rise today to inform my colleagues of the passing of Bennett Powers, a Senior Broadcast Engineering Technician for the Senate, and native of Chickasha, Oklahoma.

Oliver passed away suddenly while vacationing with friends and family near Norfolk, Virginia on June 23, 2001. He was a respected, well-liked, and dedicated member of the Senate Recording Studio staff. He is survived by his wife, Anita; two sons, Isaiah and Lucas; his mother, Ella Belle Powers of Chickasha, Oklahoma, and brother, Roy Powers, of Norman. Our hearts go out to them.

Oliver was native of Chickasha, Oklahoma, where he graduated from high school in 1971. He was also a graduate of the University of Science and Arts of Oklahoma, also located in Chickasha, and went on to earn a Master’s Degree in Journalism from the University of Oklahoma. Oliver began his service to the U.S. Senate in 1986, when he became director of audio and lighting for the Senate.

Oliver was beloved by all of those who knew him through his community, his church, and his work here in the Senate. Oliver embodied the best of what we’ve come to expect from Oklahomans: hard-working, yet soft-spoken and gentle; highly professional, yet humble, and always kind and respectful to others. He was representative of so many staff here that work tirelessly and anonymously on behalf of the Senate.

On behalf of the United States Senate, let me say thank you to Anita, Isaiah, Lucas and the other members of the Powers family for sharing him with us these many years. He will be missed.

EXTRADITION OF SLOBODAN MILOSEVIC TO THE U.N. ICTY

Mr. LIEBERMAN. Mr. President, I rise today to commend the authorities of Serbia for, at long last, handing over Slobodan Milosevic to the International Criminal Tribunal. It is ironic, and perhaps fitting, that his arrest and transfer to the international court took place on June 28—one of the most cited dates in the 1950s. In 1953, 1954, and 1959 the Serbs were defeated at the battle of Kosovo Polje, ushering in a period of Ottoman Turkish rule. It is my hope that future generations of Serbs will remember June 28, 2001 with the same sense of historic importance and as the beginning of true and long-lasting democracy and respect for the rule of law.

Mr. Milosevic has been charged by an independent, impartial, international criminal tribunal with crimes against humanity and violations of the laws or customs of war against the ethnic Albanian population of Kosovo. And according to the Prosecutor of the Tribunal, it is our hope that this tribunal will provide eventually, the justice that the victims deserve.

Serbian Prime Minister Djindjic deserves praise for his leadership on this issue and for recognizing that if Serbia wants to join the democratic family of nations, then it must uphold and respect the rule of law. Many others have contributed their efforts over the years leading up to this day. Let us not let this day fade without recognizing the contributions of Mr. Scheffer, and ICTY Prosecutors Justice Louise Arbour and Carla Del Ponte, to name just a few.

The wars that tore apart the former Yugoslavia—and which threaten Macedonia today—were largely, although not exclusively, of Mr. Milosevic’s doing. He fomented extreme ethnic nationalism and unleashed his army and special police forces on the civilian populations of Croatia, Bosnia and Kosovo. Millions of people were driven from their homes and more than a quarter of a million are believed to have died. For his policies he earned himself the name, “the Butcher of Belgrade.” His victims deserve account-ability and his former citizens deserve to know what was done in their name.

It must be stressed that the Serb people are not on trial, only Mr. Milosevic. The United States seeks friendship and partnership with all of the people of the former Yugoslavia. Our presence and contributions at the donor’s conference are evidence of our intentions.

Yet while we welcome yesterday’s developments, we must also not forget that 26 accused remain on the run, most of them in Bosnia and Serbia. I call on the accused to turn themselves in to the jurisdiction to answer the charges against them without further delay. It is the honorable thing to do. But failing this, the local authorities must take swift and decisive action, if necessary with the support of international peacekeeping troops, to deliver these fugitives from justice to the court in the Hague.

There will never be long-lasting peace and stability in the region so long as these individuals remain on the run. The fact that they have evaded justice for so long—in the case of Radovan Karadzic and Ratko Mladic it’s already six years—makes a mockery of justice and it must end.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator Kennedy in March of this year. The Local law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred November 6, 1998 in Seattle, Washington. A gay man was severely beaten with rocks and broken bottles in his neighborhood by a gang of youths shouting “faggot.” The victim sustained a broken nose and swollen jaw. When he reported the incident to police two days later, the officer refused to take the report.

I believe that government’s first duty is to defend its citizens, to defend them against the harm that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

CELEBRATION OF CAPE VERDE INDEPENDENCE DAY

Mr. REED. Mr. President, I rise today to join Cape Verdians in the July 5th celebration of Cape Verde Independence Day.

Every country is rich with its own history and unique story of how it achieved democracy, and Cape Verde is no exception. In 1462, Portuguese settlers arrived at Santiago and founded
Ribeira Grande, now Cidade Velha, the first permanent European settlement city in the tropics. After almost three centuries as a colony, in 1951 Portugal changed Cape Verde’s status to an overseas province. Then in December 1974, an agreement was signed which provided for the establishment of a government composed of Portuguese and Cape Verdean. In 1975, Cape Verdeans elected a National Assembly, which received the instruments of independence from Portugal.

For the first fifteen years of independence, Cape Verde was ruled by one party. Then in 1990 opposition groups came together to form the Movement for Democracy. Working together they ended the one party state and the first multi-party elections were held in January 1991.

Cape Verde now enjoys a stable democratic government. It is an example to other States as to what can be accomplished. These democratic changes have meant better global integration as the government has pursued market-oriented economic policies and welcomed foreign investors. Tourism, light manufacturing and fisheries have flourished. Cape Verde has made the difficult transition from a colony to a successful independent and democratic State.

Today, there are close to 350,000 Cape Verdean-Americans living in the United States, almost equal to the population of Cape Verde itself. These Americans hold a special right since the Cape Verde Constitution formally considers all Cape Verdeans at home and abroad as citizens and voters. Thus, July 5th is a day of independence for all Cape Verdean-Americans as well as those in Cape Verde.

As we approach the independence day of our own country and reflect on freedom and democracy, it is especially fitting that we remember and celebrate those special independence days of other peaceful democracies, such as Cape Verde. Join with me in wishing all those with direct and ancestral ties to Cape Verde a happy independence day.

HEALTH CARE FOR THE GUARD AND RESERVE

Mr. JOHNSON. Mr. President, I rise today in support of S. 1119, a bill that would make the Secretary of Defense responsible to conduct a study of the health care coverage of the military’s Selected Reserve.

Most South Dakotans know at least one of the 4,500 current members of the South Dakota National Guard and Reserve—the so-called Selected Reserve—or the thousands of former Guardsmen and Reservists. Sometimes, the connection is even more direct. Before joining the Army, my oldest son was a member of the South Dakota Army Guard at Yankton. South Dakota’s Guard and Reserve members have supported overseas operations, including those in Central America, the Middle East, Europe and Asia. Members of the South Dakota Air Guard are currently preparing for its mission later this year, where it will patrol the “No-Fly Zone” in Iraq. South Dakota’s Guard and Reserve units consistently rank in the highest percentile of readiness and quality of its reserve component, and has exposed possible health care deficiencies.

Many deploying members and their families have experienced tremendous turbulence moving back-and-forth between their civilian health insurance plans and TRICARE Prime, the military’s health care system. Some junior reservists have no health insurance at all. Estimating, have shown that upward of 200,000 Selected Reservists nationwide do not possess adequate insurance. The exact nature of these disturbances and the broader shortcuts of this system are unclear because examinations have not completed.

I am pleased to join with my colleagues in introducing this legislation, which will take a step towards understanding this problem and giving Congress the opportunity to address it. I know how poor health care and broken promises can reduce morale within our military and their families. A poor “quality of life” among our reserve component and active duty personnel has a direct impact on recruitment and retention of the best and brightest in our Armed Services. I will continue to do all I can to ensure our men and women in the military, veterans, and military retirees have the health care they deserve.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, June 28, 2001, the Federal debt stood at $5,663,970,068,775.88, Five trillion, six hundred sixty-three billion, nine hundred sixty-eight thousand dollars and eighty-seven cents.

One year ago, June 28, 1999, the Federal debt stood at $5,053,553,068,775.88, Five trillion, five hundred fifty-three billion, six hundred eighty-seven thousand, seven hundred seventy-five dollars and eighty-seven cents.

Mr. President, I rise today to pay tribute to Mr. DEWINES, Mr. President, I rise today to recognize a man who employed his knowledge and vision to take America into space. I am speaking of Cleveland resident, Abe Silverstein, who just passed away this month at 92 years of age, leaving a legacy of invention and innovation in the field of Space Flight.

Abe Silverstein played a part in a number of “space firsts,” and received many prestigious honors for his work. In the company of Orville Wright, Wilbur Wright, and Charles Lindbergh, Abe won the Guggenheim Award for the advancement of flight.

Abe Silverstein designed, tested, and operated the world’s first supersonic wind tunnel. It was the largest, fastest, and most powerful in the world. The research that was conducted with the tunnel allowed Abe to produce faster combat planes in World War II. This tunnel now resides in the NASA Glenn Space Research Facility in Cleveland, which Abe directed from 1961–1969.

He was also the first director of NASA Space Flight Operations and worked on the Mercury, Gemini, Apollo, and Centaur projects. The Centaur project involved the launching vehicles that propelled spacecraft to Mars, Jupiter, Saturn, Uranus, and Neptune.

Serving his country in World War II by producing new technology and helping his country achieve its goals in Space was not enough for Abe Silverstein. After retiring from NASA, Abe went on to work for Republic Steel Corporation, where he developed pollution controls to help keep our air cleaner for future generations.

Abe Silverstein always was contributing to his country, whether it be through wind-tunnel research or in serving as a Trustee at Cleveland State University. He was a man of great personal virtue and strength of character. I am proud, Mr. President, to honor this man today, who his NASA colleagues once described as “a man of vision and conviction, [a man who] contributed to the ultimate success of America’s unmanned and human space programs ... his innovative, pioneering spirit lives on in the work we do today.”

Mr. President, I rise today for all his hard work and sacrifice, and I hope that my colleagues will join me in my gratitude.

TRIBUTE TO LES AND MARILYN GORDON

Mr. SMITH. Mr. President, I rise today to pay tribute...
to Les and Marilyn Gordon, owners of The Candlelile Inn in Bradford, NH, on being named as Inn of the Year by the Complete Guide to Bed & Breakfast Inns and Guesthouses in the United States, Canada and Worldwide.

Built in 1897, the Candlelile Inn has provided a relaxing atmosphere for visiting guests for over 100 years. The Gordons purchased the Inn in 1993, and have successfully continued the tradition of accommodating the needs of discriminating travelers touring the Lakes Region.

Throughout the year The Candlelile Inn hosts special weeks for their guests to enjoy including: Currier & Ives Maple Sugar Weekend in March, Old Glory Heritage Tours in July, August and September, Foliage Midweek Getaways in September and October, and Murder Mystery Parties throughout the year.

I commend Les and Marilyn for the economic contributions they have made to the hospitality and tourism industries in our state. The citizens of Bradford and New Hampshire, have benefitted from their dedication to quality and service at The Candlelile Inn. It is truly an honor and a privilege to represent them in the United States Senate.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States and nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2605. A communication from the Principal Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a nomination for the position of Assistant Administrator for Air and Radiation, published at the end of the Senate proceedings.

EC–2606. A communication from the Department of the Interior, transmitting, pursuant to law, a report of a nomination for the position of Director of the National Park Service, received on June 28, 2001; to the Committee on Environment and Public Works.

EC–2607. A communication from the Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Director of the Army Reserve, received on June 28, 2001; to the Committee on Armed Services.

EC–2608. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, Civil Works, received on June 28, 2001; to the Committee on Armed Services.

EC–2609. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Navy, received on June 28, 2001; to the Committee on Armed Services.

EC–2610. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, Civil Works, received on June 28, 2001; to the Committee on Armed Services.

EC–2611. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Navy, received on June 28, 2001; to the Committee on Armed Services.

EC–2612. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2613. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Navy, received on June 28, 2001; to the Committee on Armed Services.

EC–2614. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2615. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Navy, received on June 28, 2001; to the Committee on Armed Services.

EC–2616. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2617. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2618. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2619. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2620. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Navy, received on June 28, 2001; to the Committee on Armed Services.

EC–2621. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2622. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Navy, received on June 28, 2001; to the Committee on Armed Services.

EC–2623. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of the Army, received on June 28, 2001; to the Committee on Armed Services.

EC–2624. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a nomination for the position of Assistant Attorney General, received on June 28, 2001; to the Committee on the Judiciary.

EC–2625. A communication from the White House Liaison, Department of Justice, transmitting, pursuant to law, the report of a nomination for the position of Assistant Attorney General, received on June 28, 2001; to the Committee on the Judiciary.

EC–2626. A communication from the White House Liaison, Department of Commerce, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of Commerce, received on June 28, 2001; to the Committee on the Judiciary.

EC–2627. A communication from the Acting Secretary of the Federal Trade Commission, transmitting, pursuant to law, a report relative to Merger Review Procedures dated June 29, 2001; to the Committee on the Judiciary.

EC–2628. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Emergency Exemptions: Special Tax Exemption for Certain Circumstances” (RIN0938–AI70) received on June 21, 2001; to the Committee on Finance.

EC–2629. A communication from the Chief of the Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Time Limitation for Requesting Refunds of Harbor Maintenance Fees” (RIN1545–AV06) received on June 21, 2001; to the Committee on Finance.

EC–2630. A communication from the Chief of the Regulations Branch, United States Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Medicaid Managed Care” (RIN0983–A170) received
EC–2631. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Nondiscrimination Requirements for Contributions to a National Bank” (RIN1545–AY36) received on June 28, 2001; to the Committee on Finance.

EC–2632. A communication from the Director of the Office of Regulations Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Veterans Increased Death Benefits” (RIN2900–AK44) received on June 27, 2001; to the Committee on Veterans’ Affairs.

EC–2633. A communication from the Director of the Office of Regulations Management, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled “Grants to States for Construction and Acquisition of State Home Facilities” (RIN2800–A343) received on June 28, 2001; to the Committee on Veterans’ Affairs.

EC–2634. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled “Incorporation by Reference of a Technical Standard ‘Flood Elevation Determination’” (44 CFR 31183) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2635. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled “Incorporation by Reference of a Technical Standard ‘Flood Elevation Determination’” (44 CFR 31183) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2636. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled “Suspension of Community Eligibility” (Doc. No. FEMA–F–7763) received on June 27, 2001; to the Committees on Banking, Housing, and Urban Affairs.

EC–2637. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled “Changes in Flood Elevation Determinations” (Doc. No. FEMA–F–7764) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2638. A communication from the Legislative and Regulatory Activities Division, Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, the report of a rule entitled “Investment Securities: Bank Activities and Operations; Leasing” (12 CFR Parts 1, 7, 23) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2639. A communication from the Legislative and Regulatory Activities Division, Comptroller of the Currency, Administrator of National Banks, transmitting, pursuant to law, the report of a rule entitled “Fiduciary Activities of National Banks” (RIN1557–AB79) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2640. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of a rule entitled “Self Underwriting and the Pools of the International Anti-Bribery and Fair Competition Act of 1998 dated July 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2641. A communication from the Acting Executive Secretary of the Agency for International Development, transmitting, pursuant to law, the report of a nomination for the position of Assistant Administrator, Bureau for Asia and the Near East, received on June 27, 2001; to the Committee on Foreign Relations.

EC–2642. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or services sold commercially under contract in the amount of $50,000,000 or more to Canada; to the Committee on Foreign Relations.

EC–2643. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, Presidential Determination Number 2001–13, relative to the Jerusalem Embassy Program; to the Committee on Foreign Relations.

EC–2644. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Sweden; to the Committee on Foreign Relations.

EC–2645. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statement of the new or revised agreement other than treaties; to the Committee on Foreign Relations.

EC–2646. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–2647. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more to France; to the Committee on Foreign Relations.

EC–2648. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed Technical Assistance Agreement for the export of defense articles or services sold commercially under a contract in the amount of $50,000,000 or more to The Netherlands; to the Committee on Foreign Relations.

EC–2649. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled “Fiduciary Activities of National Banks” (RIN1557–AB79) received on June 27, 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2650. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of a rule entitled “Self Underwriting and the Pools of the International Anti-Bribery and Fair Competition Act of 1998 dated July 2001; to the Committee on Banking, Housing, and Urban Affairs.

EC–2651. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area” received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2652. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Northeastern United States—Black Sea Bass Fishery. ‘Commercial Quota Harvested for Quarter 2 Period’ received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2653. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska—Amendments to an emergency interim rule implementing 2001 Stella sea lion protection measures (would delay season for Pacific Cod fisheries in the GOA and BSAI)” (RIN0648–AO62) received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2654. A communication from the Attorney/Advisor of the Department of Transportation, transmitting, pursuant to law, the report of a nomination for the position of General Counsel, Office of the Secretary, received on June 27, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2655. A communication from the Attorney/Advisor of the Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary for Budget and Program Analysis; to the Committee on Commerce, Science, and Transportation.

EC–2656. A communication from the Attorney/Advisor of the Department of Transportation, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary for Budget and Program Analysis; to the Committee on Commerce, Science, and Transportation.

EC–2657. A communication from the Division, Chief of the Office of Protected Resources, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Taking and Importing Marine Mammals; Amendment to Taking and Importing Marine Mammals on Certain International Wooden Vessels; Inland Waterways; Importing Vessels; Revisions to the ‘Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea’” (RIN0648–AM09) received on June 27, 2001; to the Committees on Commerce, Science, and Transportation.


EC–2659. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area” received on June 28, 2001; to the Committee on Commerce, Science, and Transportation.

EC–2660. A communication from the Acting Director of the Statutory Import Programs Staff, International Trade Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Changes in Procedures for Florence Agreement Program” (RIN06625–AA47) received on
June 29, 2001

CONGRESSIONAL RECORD — SENATE

S7193


REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD, from the Committee on Appropriations, with an amendment in the nature of a substitute:

H.R. 2217: A bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2002, and for other purposes (Rept. No. 107-36).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ALLEN:
S. 1180. A bill to allow credit under the Federal Employees' Retirement System for certain Government service which has performed abroad after December 31, 1988, and before May 24, 1998; to the Committee on Governmental Affairs.

By Mr. REID:
S. 1180. A bill to direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries; to the Committee on Energy and Natural Resources.

By Mr. HATCH (for himself, Mr. FENRICK, Mr. GRASSLEY, Mr. LEAHY, Mr. WARNER, Mr. BREAUX, Mr. BURNS, Mr. REID, Mr. CRAIG, Mr. TORRICELLI, Mr. BENNETT, Ms. SNOWE, Mr. DEWINE, Mr. HAMMACK, and Mr. HUTCHISON):
S. 1140. A bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts; to the Committee on the Judiciary.

By Mr. GRAMM (for himself, Mr. NICKLES, Mrs. HUTCHISON, Mr. MURkowski, and Mr. GRASSLEY):
S. 1141. A bill to amend the Internal Revenue Code of 1986 to treat distributions from qualified plans as qualifying income of regulated investment companies, and for other purposes; to the Committee on Finance.

By Mr. LIEBERMAN:
S. 1142. A bill to amend the Internal Revenue Code of 1986 to repeal the minimum tax preference for exclusion for incentive stock options; to the Committee on Finance.

By Mr. CAMPBELL:
S. 1143. A bill to require the Secretary of the Treasury to mint coins in commemoration of former President Ronald Reagan; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. LEVIN, Mr. DURBIN, and Mr. AKAKA):
S. 1144. A bill to amend title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331 et seq.) to reauthorize the Federal Emergency Management Food and Shelter Program, and for other purposes; to the Committee on Governmental Affairs.

By Mrs. BOXER:
S. 1145. A bill to amend the Internal Revenue Code of 1986 to extend the work opportunity credit to encourage the hiring of certain veterans, and for other purposes; to the Committee on Finance.

By Mr. REID:
S. 1146. A bill to amend the Act of March 3, 1875, to permit the State of Colorado to use land held in trust by the State as open space; to the Committee on Energy and Natural Resources.

By Mr. NICKLES:

By Mr. BURNS:
S. 1148. A bill to convey the Lower Yellow-stone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the appur- tanant irrigation districts; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENSENhäuser):
S. 1149. A bill to amend the Immigration and Nationality Act to establish a new non-immigrant category for chefs and individuals in related occupations; to the Committee on the Judiciary.

By Mr. SMITH of New Hampshire:
S. 1150. A bill to waive tolls on the Interstate System during peak holiday travel pe- riods; to the Committee on Environment and Public Works.

By Mr. REID (for himself and Mr. ENSENhäuser):
S. 1151. A bill to amend the method for achieving quiet technology specified in the National Parks Air Tour Management Act of 2000; to the Committee on Commerce, Science, and Transportation.

By Mr. DURBIN (for himself, Mr. DASCHLE, Mrs. MURRAY, Mr. CORZINE, Mr. LANDREI, Mr. LIEBERMAN, Mr. KENNEDY, Mr. SABRANES, Ms. MIKULSKI, Mr. TORRICELLI, Mr. REID, Mr. SCHUMER, Ms. STABENOW, and Mr. JOHNSON):
S. 1152. A bill to ensure that the business of the Federal Government is conducted in the public interest and in a manner that pro- vides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes; to the Committee on Governmental Affairs.

By Mr. CRAIG (for himself and Mrs. FEINSTEIN):
S. 1153. A bill to amend the Food Security Act of 1985 to establish a grassland reserve program to assist owners in restoring and conserving grassland; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SMITH of New Hampshire (for himself and Mr. WARNER):
S. 1154. A bill to preserve certain actions brought in Federal court against Japanese defendants by members of the United States Armed Forces held by Japan as prisoners of war during World War II; to the Committee on the Judiciary.

By Mr. LEVIN (for himself and Mr. WARNER) (by request):
S. 1155. A bill to authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2002, and for other purposes; to the Committee on Armed Services.

By Mr. SMITH of Oregon:
S. 1156. A bill to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products sub- ject to such Act; to the Committee on Com-merce, Science, and Transportation.

By Mr. SPECTER (for himself, Mr. LANDREI, Ms. COLLINS, Mr. SCHUMER, Mr. SNOWE, Mr. LEAHY, Mr. CORZAN, Mr. BREAUX, Mr. ALLEN, Mr. BROWNBACK, Mr. DEION, Mr. SINGHANIA, Mr. CARPER, Mr. CHAFEE, Mr. CLELAND, Ms. CLINTON, Mr. DODD, Mr. EDWARDS, Mr. FRIST, Mr. GREIg, Mr. HARKIN, Mr. JOHNSON, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. LIEBERMAN, Ms. LINCOLN, Mr. MIKULSKI, Mr. MILLER, Mr. REID, Mr. ROCKEFELLER, Mr. SABRANES, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, Mr. THOMPSON, Mr. TUBRUCK, Mr. TORRICELLI, and Mr. WARNER):
S. 1157. A bill to reauthorize the consent of Congress to the Northeast Interstate Dairy Compact and to make the Pick-Sloan Missouri Basin Program, and the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the appur- tanant irrigation districts; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CAMPBELL (for himself, Mr. INOUYE, Mr. AKAKA, Mr. STEVENS, Mr. CONRAD, Mr. BROWNBACK, Mr. MCCAIN, Mr. DASCHLE, Mr. JOHNSON, Mr. COCHRAN, Mr. BAUCUS, Mr. CONRAD, Mr. DOMENICI, Ms. STABENOW, Mr. BINGAMAN, Mr. CRAPO, Mrs. MUR- RAY, Ms. CANTWELL, Mr. INFELD, Mr. THOMAS, Mrs. BOXER, Mr. KEN- NEDY, Mr. DAYTON, Mr. CRAIG, Mr. REID, Mr. SMITH of Oregon, Mr. KERRY, Mr. ALLARD, Mr. DORGAN, Mr. SCHUMER, and Mr. BREAUX):
S. Res. 118. A resolution to designate the month of November 2001 as “National Amer- ican Indian Heritage Month”; to the Committee on the Judiciary.

By Mr. BAYH (for himself, Mr. SMITH of Oregon, Mr. DEARY, Mr. BINGAMAN, Mr. LUGAR, Mr. FEIN- STEIN, Mr. DORGAN, Mr. KERRY, Mr. KENNEDY, Mr. LIEBERMAN, Ms. CLIN- TON, Mr. WELLSTONE, Mr. DEWINE, Mr. BIDEN, Mr. ROCKEFELLER, Mr. LEVIN, Mr. CORZINE, Mr. SPECTER, Mr. TORRICELLI, Mr. GRAHAM, and Ms. SNOWE):
S. Res. 119. A resolution combating the Global AIDS pandemic; to the Committee on Foreign Relations.

By Mr. DASCHLE (for himself and Mr. LOTT):
S. Res. 120. A resolution relative to the or- ganization of the Senate; considered and agreed to.

By Mr. KERRY (for himself, Ms. SNOWE, Mr. HOLLINGS, Mr. MCCAIN, Mr. BIDEN, Mr. SABRANES, Mrs. BOXER, Mr. KENNEDY, and Mr. FEIN- GOLD):
S. Res. 121. A resolution expressing the sense of the Senate regarding the policy of the United States at the 53rd Annual Meet- ing of the International Whaling Commis- sion; to the Committee on Foreign Rela- tions.

By Mr. McCONNELL (for himself and Mr. LEAHY):
S. Res. 122. A resolution relating to the transfer of Slobodan Milosevic to the Inter- national Criminal Tribunal for Yugoslavia, and for other purposes; to the Committee on Foreign Relations.

By Mr. KERRY (for himself and Mr. BROWNBACK):
S. Con. Res. 67. A concurrent resolution recognizing the Hebrew Immigrant Aid Soci- ety; to the Committee on the Judiciary.
By Mr. AKAKA (for himself and Mr. INOUYE): S. Con. Res. 58. A concurrent resolution expressing support for the tenth annual meeting of the Asia Pacific Parliamentary Pressuring support for the tenth annual meeting of the Asia Pacific Parliamentary Forum; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 170
At the request of Mr. REID, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 170, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 351
At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 351, a bill to amend the Solid Waste Disposal Act to reduce the quantity of mercury in the environment by limiting use of mercury fever thermometers and improving collection, recycling, and disposal of mercury, and for other purposes.

S. 486
At the request of Mr. LEAHY, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 486, a bill to reduce the risk that innocent persons may be executed, and for other purposes.

S. 493
At the request of Mr. GREGG, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 493, a bill to amend the Family and Medical Leave Act of 1993 to clarify the Act, and for other purposes.

S. 497
At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 497, a bill to express the sense of Congress that the Department of Defense should field currently available weapons, other technologies, tactics and operational concepts that provide suitable alternatives to anti-personnel mines and mixed anti-tank mine systems and that the United States should end its use of such mines and join the Convention on the Prohibition of Anti-Personnel Mines as soon as possible, to expand support for mine action programs including mine victim assistance, and for other purposes.

S. 530
At the request of Mr. GRASSLEY, the name of the Senator from South Carolina (Mr. HELMS) was added as a cosponsor of S. 530, a bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for producing electricity from wind.

S. 532
At the request of Mr. DORGAN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 532, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

S. 952
At the request of Mr. REID, the name of the Senator from Nevada (Mr. EN-SIGN) was added as a cosponsor of S. 562, a bill to amend the Immigration and Nationality Act with respect to the record of admission for permanent residence in the case of certain aliens.

S. 966
At the request of Ms. CLINTON, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 966, a bill to amend the Public Health Service Act to provide for a national media campaign to reduce and prevent underage drinking in the United States.

S. 995
At the request of Mr. GREGG, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 995, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 1017
At the request of Mr. FEINGOLD, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1017, a bill to prohibit racial profiling. At the request of Mr. DODD, his name was added as a cosponsor of S. 1017, supra.

S. 1030
At the request of Mr. BINGAMAN, the names of the Senator from New Hampshire (Mr. SMITH) and the Senator from Colorado (Mr. ALLARD) were added as cosponsors of S. 1030, a bill to amend title 10, United States Code, to provide for a Korea Defense Service Medal to be issued to members of the Armed Forces who participated in operations in Korea after the end of the Korean War.

S. 1037
At the request of Mr. DODD, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1037, a bill to provide health care in rural areas by amending title XVIII of the Social Security Act and the Public Health Service Act, and for other purposes.

S. 1039
At the request of Mr. CONRAD, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1039, a bill to improve health care in rural areas by amending title XVIII of the Social Security Act and the Public Health Service Act, and for other purposes.

S. 1097
At the request of Mr. HUTCHINSON, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1097, a bill to amend title 10, United States Code, to authorize disability retirement to be granted posthumously for members of the Armed Forces who die in the line of duty while on active duty, and for other purposes.
At the request of Mr. DAYTON, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1058, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers and the producers of biodiesel, and for other purposes.

At the request of Ms. MIKULSKI, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1083, a bill to amend title XVIII of the Social Security Act to exclude clinical social worker services from coverage under the medicare skilled nursing facility prospective payment system.

At the request of Mr. GRAHAM, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1104, a bill to establish objectives for pressing the sense of the Senate re-

At the request of Mr. LIEBERMAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1104, a bill to amend title XVIII of the Social Security Act to exclude clinical social worker services from coverage under the medicare skilled nursing facility prospective payment system.

At the request of Mr. HATCH, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. RES. 7, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

At the request of Mr. HARKIN, the names of the Senator from Connecticut (Mr. DODD) and the Senator from North Dakota (Mr. CONRAD) were added as co-

At the request of Mr. HATCH, the name of the Senator from Nevada (Mr. GRAHAM) was added as a cosponsor of S. 1140, a bill to amend chapter 1 of title 9 of the United States Code and make arbitration of disputes relating to motor vehicle franchise contracts optional. This bill was introduced by Mr. HATCH.

At the request of Mr. REID, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. RES. 109, a resolution designating the second Sunday in the month of December as “National Children’s Memorial Day” and the last Friday in the month of April as “Children’s Memorial Flag Day.”

At the request of Mr. FITZGERALD, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. CON. RES. 45, a concurrent resolution expressing the sense of Congress that the Humane Methods of Slaughter Act of 1958 should be fully enforced so as to prevent needless suffering of animals.

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. CON. RES. 53, concurrent resolution encouraging the development of strategies to reduce hunger and poverty, and to promote free market economies and democratic institutions, in sub-Saharan Africa.

At the request of Mr. HAGEL, the names of the Senator from Minnesota (Mr. BONNIE), a Senator from Michigan (Ms. STABENOW), the Senator from Maryland (Mr. SARBAZ), and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. CON. RES. 53, supra.

At the request of Mr. HAGEL, the names of the Senator from Minnesota (Mr. WELLSTONE), the Senator from Michigan (Ms. STABENOW), the Senator from Maryland (Mr. SARBAZ), and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. CON. RES. 53, supra.

At the request of Mr. ALLARD, the names of the Senator from New Hampshire (Mr. GREGG), the Senator from Idaho (Mr. CRAIG), the Senator from Oklahoma (Mr. NICKLES), the Senator from Virginia (Mr. ALLEN), the Senator from Oklahoma (Mr. INHOFE), the Senator from New Hampshire (Mr. SMITH), the Senator from Texas (Mr. GRAMM), the Senator from Maine (Ms. COLLINS), the Senators from Alaska (Ms. SEN- SIONS), the Senator from Wyoming (Mr. ENZI) and the Senator from Colorado (Mr. CAMPBELL) were added as cosponsors of amendment No. 821 proposed to S. 1052, a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

By Mr. HATCH (for himself, Mr. FEINGOLD, Mr. GRASSLEY, Mr. LEAHY, Mr. WARNER, Mr. BREAUX, Mr. BURNS, Mr. REID, Mr. CRAIG, Mr. TORRICELLI, Mr. BENNETT, Mr. SNODE, Mr. DEWINE, Mr. THOMAS, and Mr. HUTCHINSON):

S. 1140. A bill to amend chapter 1 of title 9 of the United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce S. 1140, “The Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001.” I am pleased to be joined in cosponsorship of this legislation by Senators FEINGOLD, GRASSLEY, LEAHY, WARNER, BREAUX, BURNS, REID, CRAIG, TORRICELLI, BENNETT, SNODE, DEWINE, THOMAS, and HUTCHINSON. Our bill is intended to allow automobile dealers their day in court when they have disputes with the manufacturers.

As automobile dealers throughout Utah have told me, the motor vehicle dealer contract often includes mandatory arbitration clauses, and they also point out their unequal bargaining power. This is usually the result of various factors, including the manufacturers’ discretion to allocate vehicle inventory and control on the timing of delivery. Manufacturers can, thus, determine the dealer’s financial future with the allocation of the best-selling models. Manufacturers can also exercise leverage over revenue to dealers, such as warranty payments. Manufacturers can limit dealers’ rights to transfer ownership or control of the business, even to family members. And manufacturers have taken arbitrarily to take businesses away from dealers without cause.

I recognize the efficiencies of mandatory arbitration clauses in general, but the specific circumstances in the manufacturer-dealer relationship justifies this widely-supported bipartisan proposal. It is worthy to note that Congress in 1956 enacted the Automobile Dealer Day in Court Act, which provided a small business dealer in limited circumstances the right to proceed in Federal court when faced with abuses by manufacturers. And State legislatures have enacted significant protections for auto dealers.

S. 1140 amends Title 9 of the U.S. Code and make arbitration of disputes in motor vehicle franchise contracts optional. This would allow dealers to opt voluntarily for arbitration or use procedures and remedies available under State law, such as state-established administrative boards specifically established to resolve dealer-manufacturer disputes.

I must note that this legislation is extremely narrow and affects only the unique relationship between small business auto dealers and motor vehicle manufacturers, which is strictly governed by State law. This legislation is necessary to protect the States’ interests in regulating the motor vehicle dealer/manufacturer relationship.

All States, except for Alaska, have enacted laws specifically designed to regulate the economic relationship between motor vehicle dealers and manufacturers to prevent unfair manufacturer contract terms and practices. In most States, including my home State of Utah, effective State administrative forums already exist to handle dealer/manufacturer disputes outside of the court system. Indeed, in the majority of States, a special State agency or forum is charged with administering and enforcing motor vehicle franchise law. These State forums provide an inexpensive, speedy, and non-judicial resolution of disputes.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1140

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SEC. 17. Motor vehicle franchise contracts

(a) For purposes of this section, the term—

"(1) ‘motor vehicle’ has the meaning given such term under section 30122(b) of title 49; and

"(2) ‘motor vehicle franchise contract’ means a contract under which a motor vehicle manufacturer, or distributor, sells motor vehicles to any other person for resale to an ultimate purchaser and authorizes such other person to repair and service the manufacturer’s motor vehicles.

(b) Whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to the contract, arbitration may be used to settle such controversy only if after such controversy arises both parties consent in writing to use arbitration to settle such controversy.

(c) Whenever arbitration is elected to settle a dispute under a motor vehicle franchise contract, the arbitrator shall provide the parties with a written explanation of the factual and legal basis for the award.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1 of title 9, United States Code, is amended by adding at the end the following:—

"17. Motor vehicle franchise contracts."

SEC. 2. EFFECTIVE DATE.

The amendments made by section 2 shall apply to contracts entered into, amended, altered, modified, renewed, or extended after the date of the enactment of this Act.

Mr. FEINGOLD. Mr. President, I rise today to introduce, with my distinguished colleague from Utah, Senator HATCH, the Motor Vehicle Franchise Contract Arbitration Fairness Act of 2001. I want to recognize the efforts of the Senator from Iowa, Senator GRASSLEY, in advancing this legislation in the last Congress, and note how pleased I am that the distinguished ranking member and former chairman of the Judiciary Committee decided to take the lead on this bill this year. By the time the 106th Congress concluded, we had the support of 56 Senators for this bill. So I believe we have an excellent opportunity to pass this bill this year, and I look forward to working with the Senator from Utah to make that happen.

While alternative methods of dispute resolution such as arbitration can serve a useful purpose in resolving disputes between parties, I am extremely concerned about the increasing trend of stronger parties to a contract forcing weaker parties to waive their rights and agree to arbitrate any future disputes that may arise. In every Congress since 1984, I have introduced the Civil Rights Procedures Protection Act, which amended certain civil rights statutes to prevent the involuntary imposition of arbitration to claims that arise from unlawful employment discrimination and sexual harassment.

A few years ago, it came to my attention that the automobile and truck manufacturers, which often present dealers with “take it or leave it” contracts, are increasingly including mandatory binding arbitration clauses as a condition of entering into or maintaining a auto or truck franchise. This practice forces dealers to submit their disputes with manufacturers to arbitration. As a result, dealers are required to waive access to judicial or administrative forums, substantive contract rights, and statutorily provided procedures. In short, this practice clearly violates the dealers’ fundamental due process rights and runs directly counter to basic principles of fairness.

Franchise agreements for auto and truck dealerships are typically not negotiable between the manufacturer and the dealer. The dealer accepts the terms offered by the manufacturer, or it loses the dealership, plain and simple. Dealers, therefore, have been forced to rely on the States to pass laws designed to balance the manufacturer’s greater bargaining power and to safeguard the rights of dealers. The first State automobile statute was enacted in my home State of Wisconsin in 1937 to protect citizens from injury caused when a manufacturer or distributor induced a Wisconsin citizen to invest considerable sums of money in dealership facilities, and then canceled the dealership without cause. Since then, all States except Alaska have enacted substantive law to balance the enormous bargaining power enjoyed by manufacturers over dealers and to safeguard small business dealers from unfair automobile and truck manufacturer practices.
A little known fact is that under the Federal Arbitration Act, FAA, arbitrators are not required to apply the particular Federal or State law that would be applied by a court. That enables the stronger party, in this case the auto or truck manufacturer, to use arbitration to circumvent laws specifically enacted to regulate the dealer/manufacturer relationship. Not only is the circumvention of these laws inequitable, it also eliminates the deterrent to prohibited acts that State law provides.

The majority of States have created their own alternative dispute resolution mechanisms and forums with access to auto industry expertise that provide inexpensive, efficient, and non-judicial resolution of disputes. For example, in Wisconsin, mandatory mediation is required before the start of an administrative hearing or court action. Arbitration is also an option if both parties agree. These State dispute resolution forums, with years of experience and greatly reduced costs, may be the most appropriate for the small number of manufacturer-dealer lawsuits. When mandatory binding arbitration is included in dealer agreements, these specific State laws and forums established to resolve auto dealer manufacturer disputes are effectively rendered null and void with respect to dealer agreements.

Besides losing the protection of Federal and State law and the ability to use State forums, there are numerous reasons why a small business owner may not agree to binding arbitration. Arbitration lacks some of the important safeguards and due process offered by administrative procedures and the judicial system: 1. arbitration lacks the formal court supervised discovery process often necessary to learn facts and gain documents; 2. an arbitrator need not follow the rules of evidence; 3. arbitrators generally have no obligation to provide factual or legal discussion of the decision in a written opinion; and 4. an arbitrator often does not allow for judicial review.

The most troubling problem with this sort of mandatory binding arbitration is the absence of judicial review. Take for instance a dispute over a dealership termination. To that dealer, that small business person, this decision is of commercial life or death importance. Even under this scenario, the dealer would not have recourse to substantive judicial review of the arbitrators’ ruling. Let me repeat this very clearly on this point: in most circumstances an arbitration award cannot be vacated, even if the arbitration panel disregarded state law that likely would have produced a different result.

The use of mandatory binding arbitration is increasing in many industries, but nowhere is it growing more steadily than the auto/truck industry. Currently, at least 11 auto and truck manufacturers require some form of such arbitration in their dealer contracts.

In recognition of this problem, many States have enacted laws to prohibit the inclusion of mandatory binding arbitration clauses in certain agreements. The Supreme Court, however, held in Southland Corp. v. Keating, 104 S. Ct. 852 (1984), that the FAA by implication preempts these State laws. This has the effect of nullifying many State arbitration laws that were designed to protect weaker parties in unequal bargaining positions from involuntarily signing away their rights.

The legislative history of the FAA indicates that Congress never intended to have the Federal system preempt the province of the States, the Supreme Court’s decision in Southland Corp. has in effect made any State action on this issue moot. Therefore, along with Senator HATCH, I am introducing this bill today to ensure that dealers are not coerced into waiving their rights. Our bill, the Motor Vehicle Arbitration Reform Act of 2001, would simply provide that each party to an auto or truck franchise contract has the option of selecting arbitration, but cannot be forced to do so.

The bill would not prohibit arbitration. On the contrary, the bill would encourage arbitration by making it a fair choice that both parties to a franchise contract may willingly and knowingly select. In short, this bill would ensure that the decision to arbitrate is truly voluntary and that the rights and remedies provided for by our judicial system are not waived under coercion.

In effect, if small business owners today want to obtain or keep their dealership, they may be able to do so only by relinquishing their legal rights and foregoing the opportunity to use the courts or administrative forums. I cannot say this more strongly, this is unacceptable; this is wrong. It is at great odds with our tradition of fair play and elementary notions of justice. I therefore urge my colleagues to join in this bipartisan effort to put an end to this invidious practice.

By Mr. LIEBERMAN:

S. 1142. A bill to amend the Internal Revenue Code of 1986 to repeal the minimum tax preference for exclusion for incentive stock options; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, today I am reintroducing a proposal with regard to the perverse impact of the Alternative Minimum Tax, AMT, on Incentive Stock Options, ISOs. I first introduced this proposal on April 30, 2001, as Section 5 of S. 798, the Productivity, Opportunity, and Prosperity Act of 2001. I am reintroducing this proposal as a separate bill to highlight the importance of this issue.

Incentive stock options and the AMT did not exist when Franz Kafka’s “The Castle” was published in 1926. The book describes the relentless but futile efforts of the protagonist to gain recognition from the mysterious authorities ruling from their castle a village where K. wants to establish himself. The world he inhabits is both absurd and real. Kafka’s characters are trapped, and punished. This own came before they ever have offended the authorities.

The AMT/ISO interaction would be one that Kafka would appreciate. In the case of ISOs an employee who receives ISOs as an incentive can be taxed on the phantom paper gains the tax code deems to exist when he or she exercises an option, and be required to pay the AMT tax on these “gains” even if the “gains” do not, in fact, exist when the tax is paid. This means the employee pays no tax on his or her profits or assets, with which to pay the AMT and might even have to borrow funds to pay the tax or even go into default on his or her AMT liability.

This Kafkaesque situation is unfair. It is not fair to have the AMT tax on “income” or “gains” unless the income or gains exist. With the AMT tax on ISOs, it is not relevant if the “gains” exist in a financial sense. That they exist on paper is sufficient to trigger the tax.

The situation is also inconsistent with many well-established Federal Government policies. For example, our country favors stock options as an incentive for hard-working and productive employees of entrepreneurial companies. In most cases, entrepreneurs take enormous risks, receive less compensation than employees working for established companies, and have no company-sponsored pension plan. In addition, our country favors employee ownership of firms. Employee stock ownership gives these employees a huge stake in the success of the company and motivates them to dedicate themselves to the firm’s success. Finally, our country also favors long-term investments that generate growth. We know that growth is most likely to arise when entrepreneurs take risks over the long-term and build fundamental value for their companies and shareholders and owners. The policy favoring long-term investments is reflected in the fact that capital gains incentives are available only if an investment is held for at least one year. An investment sold before the end of this “holding period” receives no capital gains benefit. The application of the AMT to ISOs is inconsistent with all three of these public policies.

Let me explain the difference between ISOs and NSOs. Incentive stock options are sanctioned by the Internal Revenue code. Under current law the employee pays no tax when he or she exercises the option and buys the company’s shares at the stock option price. The company receives no tax deduction.
on the spread, the difference between the option price and the market price of the stock. If the employee holds the stock for two years after the grant of the option and one year after the exercise of the option, he or she pays the capital gains tax on the difference between the exercise price and the sale price on the sale of the stock. The tax payment is deferred until the stock is sold and the tax is paid on the real gains that are realized from the sale.

NSOs, or stock options that do not satisfy the tax code requirements for ISOs, are "non-qualifying stock options" or NSOs. With NSOs the employee is taxed immediately when the option is exercised on the spread between the grant and exercised price. This forces an employee to sell stock as soon as he or she exercises his options so that they can pay the tax on the spread. This is a zero sum game for the employee, selling the stock he or she has just bought to pay a tax on the stock he or she is about to sell. Even worse, because the stock is not "held" for one year, this tax is paid at the ordinary income tax rates, not the preferential capital gains tax rates. The company receives a business expense deduction on the spread.

If we look at the spread at the time of exercise, it is clear that companies would tend to offer ISOs rather than NSOs to their employees. Employees would be encouraged to hold their shares for at least a year after the option is exercised in order to avoid the business expense deduction on the spread.

The problem is that ISOs come with a major liability, the application of the Alternative Minimum Tax, AMT, to the spread at the time of exercise. This tax is due to be paid even if the stock is held for the required period and if the stock is eventually sold at a fraction of its value at the time the option is exercised. At the time the option is exercised, the spread is a zero sum game for the entrepreneur. The spread is paid to the company and the employee. They would then qualify for capital gains tax rates on the realized gains.

The AMT was created to ensure the "fair share" on the rich cannot use tax shelters to avoid paying their "fair share." Taxpayers with real gains, they have no bearing on taxpayers who may never see the "gains," and "gains" at the exercise of the option are a major disincentive for them to offer ISOs. The risks are too great that the employee will have no real gains with which to pay the tax, that employee will have to sell stock immediately at a loss and ordinary income tax rates to make sure that funds are available to pay the tax when it is due, or take the risk of holding the stock.

My understanding is that the firms that are most likely to grant ISOs are those firms that have no ability to use the corporate deduction that is available for NSOs. These are small firms with no tax liability for which the deduction is simply a tax loss carried forward with no current year value. With these firms the ISO held for two years makes no sense and it is an anomaly in AMT/ISO problems. The AMT was created to ensure the "fair share," it is particularly sad that it is these firms and these employees which are feeling the brunt of this problem.

The application of the AMT to ISOs is strange because long-term holdings of stock, as required by the ISO law, are classic capital gains transactions and we do not apply the AMT to the tax benefit conferred by the capital gains tax. Under the AMT only "tax preference items" enumerated in the AMT are included when the AMT calculation is made. The capital gains differential, the difference between the ordinary tax rate on income and the lower capital gains rate, is a tax benefit but that differential is not included in the AMT. Given all the problems we are now seeing with the AMT the capital gains differential should not be included as a preference item. But, the Congress reversed this and the AMT is still applied to ISOs. This makes no sense and it is an anomaly in the tax code. When the Congress restored the capital gains differential and did not include it as an AMT tax preference item, we should have enacted a conforming amendment regarding the AMT and ISOs. We didn't, and we should do so now.

With the AMT applied to ISOs, taxpayers are caught in a Catch-22 situation. If they hold the stock for the required year, they can qualify for capital gains treatment on the eventual sale of the stock. But, in doing so they are taking a huge risk that the AMT tax bill will exceed the value of the stock when the AMT is paid. If the tax is too large, they may have to sell their stock before the capital gains holding period has run and pay ordinary income tax rates on any gains. This is a form of lottery that serves no public policy.

The AMT was created to ensure the rich cannot use tax shelters to avoid paying their "fair share." Taxpayers are supposed to calculate both their regular tax and the AMT bill, then pay whichever is higher. The AMT is likely to snare 1.5 million taxpayers this year and nearly 36 million by 2010. But the case with ISOs is one where the taxpayers may never see the "gains," and a tax on phantom gains. There are real gains, they should and will pay tax on them, but only if and when the gains are realized.

Of course, with the recent huge drop in values for some stocks, many entrepreneurs are now being hit with immense AMT tax bills on the paper gains on stocks that are now worth a fraction of the price at the time of exercise. At a townhall meeting held in California by Representative Lofgren and Representative Bob Matsui, Kathy Swartz, a Mountain View woman, six months pregnant and soon to sell her "dream house" because she and her husband Karl owe $2.4 million in AMT, asked, "How many victims do you need before you say it's horrible?" We are taxing paper gains on taxpayers who in fact owe five- to seven-figure tax bills on gains they never realized.

My bill would change those tax rules so that the AMT no longer applies to ISOs and no tax is owed at the time the entrepreneur exercises the option. This change would eliminate the unfair taxation of paper gains on ISOs. This would encourage long-term holdings of stock, not immediate sale of the stock as a hedge against AMT tax liability. It would do nothing to exempt entrepreneurs from paying tax on their real gains when they eventually sell the stock.

My bill would solve this problem going forward. It would not, as drafted, provide relief to those who already have been hit with AMT taxes on phantom gains. There is a bipartisan group in the House and Senate focusing on this group of taxpayers. This group has a strong claim for relief based on the inherent unfairness of the AMT as applied to ISOs. The unfairness of this law leads me to call for reform going forward should be remedied for current, as well as future taxpayers.

Let me be clear about the cost and benefits. The JTC on the Joint Tax Committee on Taxation has found that my proposal would reduce government tax revenues by $12.412 billion over ten years. I am puzzled by this estimate, but there is no way for me to appeal it. The JTC does not provide explanations for its estimates, but I would assume that this estimate is based on the likelihood that there would be fewer tax payments at the time options are exercised as firms move from NSOs to ISOs. The employees with ISOs would not be paying the AMT, and there will be more employees who hold the stock and pay capital gains tax rates. Offsetting this,
there will be fewer companies taking the deduction for NSOs. The revenue loss year-by-year is as follows: —$1,821 billion (2002), —$1,126 (2003), —$858 (2004), —$825 (2005), —$940 (2006), —$1,106 (2007), —$1,341 (2009), —$1,260 (2010), and $1,910 (2011). The loss during the 2002-2006 period is —$5,816 billion. I do not propose to enact my bill unless this sum is financed and will have no impact on the Federal budget.

I am pleased that Rep. Zoe Lofgren (D-CA) has introduced legislation on AMT/ISO in the House (H.R. 1487). Her bill has attracted a bipartisan group of cosponsors. I look forward to working with her and other Members to remedy this inequity in the tax code and to do so with regard to current as well as future taxpayers.

Let me note that I have proposed in S. 798 to provide a special capital gains tax rate, in fact to set a zero tax rate, for stock purchased by employees in stock option plans, by investors in initial public offerings, and similar corporations. This zero rate could well dive from the exercise price creating an even more invidious trap.

Kafka’s “The Castle” should remain as a magnificent fiction. We have no place for taxes on phantom income and paper gains. Our taxpayers should be able to refrain from the exercise price creating an even more invidious trap.

As Alzheimer’s sets in, brain cells gradually deteriorate and die. People afflicted by the disease gradually lose their cognitive ability. Patients eventually become completely helpless and incompetent for themselves for even the most basic daily needs. Each of the millions of Americans who is now affected will eventually, barring new discoveries in treatment, lose their ability to remember recent and past events, family and friends, even simple things like how to take a bath or turn on lights. Ronald Reagan, one of the most courageous and optimistic Presidents in American history, is no exception.

Shortly after being shot in an assassination attempt, Ronald Reagan’s courage and good humor in the face of a life threatening situation were evident when he famously apologized to his wife Nancy saying “Sorry honey, I forgot to duck.” Unfortunately, once Alzheimer’s disease takes hold, it delivers a slow mind destroying bullet that none of us can duck to avoid. As Ronald Reagan wrote shortly after learning of his diagnosis “I only wish there was some way I could have spared Mrs. Reagan, he had his good days and bad days, “just like everybody else.” In America, his condition has completely deteriorated. “It’s frightening and it’s true.” Nancy said, speaking of the disease and what it has done to her husband and family. “It’s sad to see somebody you love and have been married to for so long, with Alzheimer’s, and you can’t share memories.” Mrs. Reagan said.

In the introduction to a recently released book based on the touching love letters exchanged between herself and Reagan, Nancy elaborated on her sense of loss when she wrote, “You know that it’s a progressive disease and that there’s no place to go but down, no light at the end of the tunnel. You get tired and frustrated, because you have no control and you feel helpless.” She also said, “There are so many memories that I can no longer share, which makes it very difficult.”

Nancy Reagan has earned our Nation’s admiration for her steadfast and loving dedication to her husband as she has watched her beloved husband slowly fade away. Likewise, families all across our Nation, day in and day out, choose to personally provide care for their loved ones suffering from Alzheimer’s, rather than putting them in institutions. They deserve our respect and support.

Fortunately, Nancy Reagan has had access to vital resources that help her care for her husband. This is how it should be. Unfortunately, there are many American families out there who do not have access to these resources. This bill will help alleviate that by raising money to help American families who are struggling while providing care for their loved ones.

Fortunately, funding for Alzheimer’s research has increased significantly over the past several years. Ronald Reagan’s courage in coming forward and publically announcing his condition played an important role in raising public awareness of Alzheimer’s and paved the way for the recent increases in research funding. This bill would complement these efforts.

Once again, the legislation I am introducing today authorizes the U.S. Mint to produce commemorative coins honoring Ronald Reagan while raising funds to help families care for their family members suffering from Alzheimer’s disease. I urge my colleagues to support passage of this legislation.

Ronald Reagan’s eternal optimism and deep seated belief in an even better future for our Nation was underscored when he said, “I know that for America, there will always be a bright future ahead.” This bill, in keeping with this quote’s spirit, will help provide for a better future for many American families.
I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

SEC. 2. COIN SPECIFICATIONS.

(a) Denominations.—The Secretary of the Treasury (hereafter in this Act referred to as the “Secretary”) shall mint and issue the following coins:

(1) $5 Gold Coins.—Not more than 100,000 $5 coins, which shall—
(A) weigh 8.359 grams;
(B) have a diameter of 0.850 inches; and
(C) contain 90 percent gold and 10 percent alloy.

(2) $1 Silver Coins.—Not more than 500,000 $1 coins, which shall—
(A) weigh 26.73 grams;
(B) have a diameter of 1.000 inches; and
(C) contain 90 percent silver and 10 percent copper.

(b) Bimetallic Coins.—The Secretary may mint and issue not more than 200,000 $10 bimetallic coins of gold and platinum instead of the gold coins required under subsection (a), in an amount equal to not more than—

(1) $50 per coin for the $10 coin or $35 per coin for the $5 coin; and
(2) $10 per coin for the $1 coin.

SEC. 3. SOURCES OF BULLION.

(a) Platinum and Gold.—The Secretary shall obtain platinum and gold for minting coins under this Act from available sources.

(b) Silver.—The Secretary may obtain silver for minting coins under this Act from stockpiles established under the Strategic and Critical Materials Stock Piling Act and from other available sources.

SEC. 4. DESIGN OF COINS.

(a) Design Requirements.—

(1) In General.—The design of the coins minted under this Act shall—
(A) be emblematic of the presidency and lifetime of former President Ronald Reagan;
(B) bear a design on the reverse side that is similar to the depiction of an American eagle carrying an olive branch, flying above a nest containing another eagle and hatchlings, as depicted on the 2001 American Eagle Gold Proof coins.

(2) Designation and Inscriptions.—On each coin minted under this Act, there shall be—

(A) a designation of the value of the coin;
(B) a designation of the year of “2005”; and
(C) inscriptions of the words “Liberty”, “In God We Trust”, “United States of America”, “E Pluribus Unum”.

(b) Design Selection.—The design for the coins minted under this Act shall be—

(1) determined by the Secretary, after consultation with the Commission of Fine Arts; and
(2) reviewed by the Citizens Commemorative Coin Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) Quality of Coins.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) Mint Facility.—Only one facility of the United States Mint may be used to strike any particular combination of denomination and quality of the coins minted under this Act.

(c) Period for Issuance.—The Secretary may issue coins minted under this Act only during the period beginning on January 1, 2005 and ending on December 31, 2005.

SEC. 6. SALE OF COINS.

(a) Sale Price.—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the face value of the coins;
(2) the surcharge provided in subsection (d) with respect to such coins; and
(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) Bulk Sales.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) Prepaid Orders.—

(1) In General.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) Discount.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

(d) Stigmatic.—All sales of coins issued under this Act shall include a surcharge established by the Secretary, in an amount equal to not more than—

(1) $50 per coin for the $10 coin or $35 per coin for the $5 coin; and
(2) $10 per coin for the $1 coin.

SEC. 7. DISTRIBUTION OF SURCHARGES.

(a) In General.—Subject to section 5134(f) of title 31, United States Code, the proceeds from the surcharges received by the Secretary from the sale of coins issued under this Act shall be paid promptly by the Secretary to the Department of Health and Human Services to be used by the Secretary of Health and Human Services for the purposes of—

(1) providing grants to charitable organizations that assist families in their efforts to provide care at home to a family member with Alzheimer’s disease; and
(2) increasing awareness and educational outreach regarding Alzheimer’s disease.

(b) Audits.—Any organization or entity that receives funds from the Secretary for purposes of—

(1) shall be subject to the audit requirements of title 31, United States Code, with regard to such funds.

SEC. 8. FINANCIAL ASSURANCES.

(a) No Net Cost to the Government.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

(b) Payment for Coins.—A coin shall not be issued under this Act unless the Secretary has received—

(1) full payment for the coin;
(2) security satisfactory to the Secretary to indemnify the United States for full payment; and
(3) a guarantee of full payment satisfactory to the Secretary from a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

By Mr. LIEBERMAN (for himself, Ms. COLLINS, Mr. LEVIN, Mr. DURBON, and Mr. AKAKA):

S. 1144. A bill to amend title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331 ed. seq.) to reauthorize the Federal Emergency Management Food and Shelter Program, and for other purposes; to the Committee on Governmental Affairs.

Mr. LIEBERMAN. Mr. President, I rise to introduce a bill that will re-authorize a small but highly effective program— the Emergency Food and Shelter Program, or EFS for short. The EFS program, which is administered by the Federal Emergency Management Agency, supplements community efforts to meet the needs of the homeless and hungry in all 50 States. I am very pleased that my colleagues on the Committee on Governmental Affairs, Senators COLLINS, LEVIN, DURBON, and AKAKA, are joining me as original cosponsors of this legislation. Our committee has jurisdiction over the EFS program, and it is my hope that together we can generate even more bipartisan support for a program that makes a real difference with its tiny budget. The EFS program is a great help not only to the Nation’s homeless population but also to working people who are trying to feed and shelter their families at entry-level wages. Services supplemented by the EFS funding, such as food banks and emergency rent-utility assistance programs, are especially helpful to families with big responsibilities but small paychecks.

One of the things that distinguishes the EFS program is the extent to which it relies on non-profit organizations. Local boards in counties, parishes and municipalities advertise the availability of funds, decide on non-profit and local government agencies to be funded, and monitor the recipient agencies. The local boards, like the program’s National Board, are made up of charitable organizations including the National Council of Churches, the United Jewish Communities, Catholic Charities, USA, the Salvation Army, and the American Red Cross. By relying on community participation, the program keeps administrative overhead unusually low amount, less than 3 percent.

The EFS program has operated without authorization since 1984 but has been sustained by annual appropriations. The proposed bill will re-authorize the program for the next three years. It will also authorize modest funding increases over the amounts appropriated in recent years. A similar bill introduced by Senator THOMPSON and me in the last Congress, S. 1546, passed the Senate by Unanimous Consent.

In summary, FEMA’s Emergency Food and Shelter Program is a highly efficient example of the government relying on the country’s non-profit organizations to help people in innovative ways. The EFS program aids the homeless and the hungry in a majority of the Nation’s counties and in all 50 States, and I ask my colleagues to support this program and our re-authorizing legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.
There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 114

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

Section 322 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11352) is amended as follows:

“(a) in general.—Section 322(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11352) is amended by striking paragraph (6) and inserting the following:

“(6) guidelines requiring each local board to include in their membership not less than 1 home-based individual, former homeless individual, homeless advocate, or recipient of food or shelter services, except that such guidelines may waive such requirement for any board unable to meet such requirement if the board otherwise consults with homeless individuals, former homeless individuals, homeless advocates, or recipients of food or shelter services.”

By Mrs. BOXER:

S. 1145. A bill to amend the Internal Revenue Code of 1986 to extend the work opportunity credit to encourage the hiring of certain veterans, and for other purposes; to the Committee on Finance.

Mrs. BOXER. Mr. President, I am introducing legislation to help the estimated 1.5 million veterans who are now living in poverty by giving a tax credit to those employers who hire them and put them on the road to financial independence. This idea was proposed and is supported by the National Coalition for Homeless Veterans and the Non-Commissioned Officers Association.

This legislation is based upon the current tax credit offered for employers who hire those coming off welfare. Veterans groups tell me that the current tax credit is underutilized by veterans because many are not receiving food stamps or are not on welfare. Because the bill I am introducing today bases eligibility on the poverty level, more veterans will be able to benefit from this credit.

My bill would allow employers to receive a hiring tax credit of 50 percent of the veteran’s first year wages and a retention credit of 25 percent of the veteran’s second year wages. Only the first $20,000 of wages per year will count toward the credit.

I offered this legislation as an amendment to the tax bill. While my amendment failed on a procedural vote, 49–50, opponents indicated that enacting this legislation would be a good thing to do. This being the case, I am hopeful that the Senate will take up and pass the bill I am introducing today in a bipartisan manner. It is the least we can do for our veterans who so bravely served our Nation and deserve our help.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1146

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Veterans Opportunity to Work Act.”

SECTION 2. EXPANSION OF WORK OPPORTUNITY TAX CREDIT.

(a) in General.—Section 51(c)(1) of the Internal Revenue Code of 1986 (relating to members of targeted groups) is amended by striking “or” at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and substituting “, or”, and by adding at the end the following:

“(II) a qualified low-income veteran.”

(b) QUALIFIED LOW-INCOME VETERAN.—Section 51(c)(3) of the Internal Revenue Code of 1986 (relating to members of targeted groups) is amended by redesignating paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following:

“(10) QUALIFIED LOW-INCOME VETERAN.—

“(A) in general.—The term ‘qualified low-income veteran’ means any veteran whose gross income for the taxable year preceding the taxable year including the hiring date, was below the poverty line (as defined by the Office of Management and Budget) for such preceding taxable year.

“(B) VETERAN.—The term ‘veteran’ has the meaning given such term by paragraph (3)(B).

“(C) SPECIAL RULES FOR DETERMINING AMOUNT OF CREDIT.—For purposes of applying this subparagraph to wages paid or incurred to any qualified low-income veteran—

“(i) subsection (a) shall be applied by substituting ‘50 percent of the qualified first-year wages and 25 percent of the qualified second-year wages’ for ‘25 percent of the qualified first-year wages’, and

“(ii) in lieu of paragraphs (2) and (3) of subsection (b), the following definitions and special rule shall apply:

“(I) QUALIFIED FIRST-YEAR WAGES.—The term ‘qualified first-year wages’ means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer.

“(II) QUALIFIED SECOND-YEAR WAGES.—The term ‘qualified second-year wages’ means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such individual determined under clause (I).

“(III) ONLY FIRST $20,000 OF WAGES PER YEAR TAKEN INTO ACCOUNT.—The amount of the qualified first and second year wages which may be taken into account with respect to any individual shall not exceed $20,000 per year.

“(D) PERMANENCE OF CREDIT.—Section 51(c)(4) of the Internal Revenue Code of 1986 (relating to terminability) is amended by inserting “(except for wages paid to a qualified low-income veteran)” after “individual”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after the date of the enactment of this Act.

By Mr. ALLARD:

S. 1146. A bill to amend the Act of March 3, 1875, to permit the State of Colorado to use land holdings by the State as open space; to the Committee on Energy and Natural Resources.

Mr. ALLARD. Mr. President, today I am introducing legislation to fulfill the wishes of my fellow Coloradans to allow the State to protect 300,000 acres of State land as open space.

The origins of this issue date back to 1875 when Congress passed the legislation which authorized the Territory of Colorado to form a constitution, State government and be admitted into the Union. The 1875 Enabling Act established that Sections 16 and 36 of each township in the new State would be granted to said State for the support of public education. A federal directive to the State was clear: provide a sound financial basis for the long-term benefit of public schools. The Colorado State Constitution further strengthened this position and required the State to manage its land holdings “in such a manner as will secure the maximum possible amount” for the public school fund.

Today, there are some three million surface acres of State trust lands which are leased for ranching, farming, oil and gas production and other uses. Some of these lands are the most beautiful parcels in the state and offer a tremendous natural resource.

Through the years, the lands have been a reliable, but a dwindling source of funds to the overall education budget. Currently, the State of Colorado spends approximately $3.5 billion annually on public schools, of this amount revenues from State trust lands account for about $22 million.

Now, however, Coloradans priorities have changed, including a strong desire to protect open space and the environment. These changes became evident in a 1996 voter approved State Constitutional Amendment which gave more flexibility in the management of the trust lands. Among other things, the Amendment established a 300,000 acre Stewardship Trust. The voters recognized that certain State trust lands may be more valuable in the future if they are kept in the trust land portfolio rather than disposed of for a short term financial gains. The lands in the new Stewardship Trust will be managed “to maximize options for continued stewardship, public use or future disposition” by protecting and enhancing the “beauty, natural values, open space and wildlife habitat” on these parcels. Further, it struck the provision requiring “maximizing revenue” and replaced it with a requirement that the land board to manage its land holdings “in order to produce reasonable and consistent income over time.”
While the Amendment has withstood court challenges, it still remains that the Stewardship Trust could, in the future, cause a breach of the Enabling Act. In order to correct this potential breach, I am introducing this legislation with the full support of the State of Colorado to ensure that the wishes of the voters are upheld and the Stewardship Trust is fully implemented.

There are two key points of the legislation. First, the bill allows 300,000 acres of state trust lands to be used for open space, wildlife, recreational, or other natural value. Second, it exempts these lands from the requirement that they generate income for the common schools.

The Colorado State Land Board has a clear mission for implementing the Stewardship Trust: to protect the crown jewels of the state trust lands and ensure that these lands receive special protection from sale or development.

It is also clear that Colorado voters wanted to set aside 300,000 acres from potential development. I want to help the State fulfill these goals.

This is a unique bill and ensures the state’s flexibility in managing the trust lands. It does not change the intent of the Stewardship Trust, just ensures that the Enabling Act and the State Constitution are consistent.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD as follows:

S. 1146

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COLORADO TRUST LAND.

Section 7 of the Act of March 3, 1875 (18 Stat. 475, chapter 139) (commonly known as the “Colorado Enabling Act”), is amended by inserting before the period at the end the following: “and for use for open space, wildlife habitat, scenic value, or other natural value, regardless of whether the land generates income for the common schools as described under section 14, except that the amount of land used for natural value shall not exceed 300,000 acres’”.

By Mr. NICKLES:


Mr. NICKLES. Mr. President, I rise today to introduce legislation, the Thorium Remediation Reauthorization Act of 2001. This bill will provide authorization for the Federal Government to decommission and remediate costs for a thorium facility in West Chicago, Illinois. In a DOE proceeding, it was determined that the government is responsible for 55.2 percent of all West Chicago cleanup costs because 55.2 percent of WADC’s cleanup costs resulted from Federal contracts. Under Title X of the Energy Policy Act of 1992 (“EPACT”), the thorium licensee pays for all West Chicago cleanup costs, and is then reimbursed, though annual appropriations, the government’s share of those costs.

There is already more than a $60 million shortage in authorized funding for the DOE’s West Chicago cleanup costs. Despite that, the thorium licensees have continued to pay all decommissioning costs at the West Chicago plant. Furthermore, the government is responsible for 44.8 percent of the cleanup costs. Despite that, the thorium licensees have continued to pay all decommissioning costs at the West Chicago plant.

The significant costs associated with the West Chicago cleanup are a result, in large part, of extensive government use of the facility to support the development of our country’s nuclear defense program, including the Manhattan project. With the exception of the Kress Creek and groundwater, total cleanup costs at the factory site and all vicinity properties can now be estimated with reasonable certainty. The $123 million authorized by this bill will permit the government to begin reimbursing the amount it is already in arrears to the thorium licensees.

Funding for this reauthorization would come from the General Treasury. Thus, this legislation will not diminish the availability of funds in the DOE’s Decontamination and Decommissioning Fund, from which both Title X uranium licensees and the DOE’s gaseous diffusion plants receive funding.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1147

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION OF THORIUM REMEDICATION.

(a) Section 1001(b)(2)(C) of the Energy Policy Act of 1992 (42 U.S.C. 2269a) is amended by striking “$140,000,000”, and inserting “$263,000,000”.

(b) Section 1003(a) of such Act (42 U.S.C. 2269a–2) is amended by striking “$490,000,000” and inserting “$613,000,000”.

(c) Section 1602(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2278c–1) is amended by striking “$488,333,333” and inserting “$508,833,333”.

By Mr. BURNS:

S. 1148. A bill to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the appurtenant irrigation districts; to the Committee on Energy and Natural Resources.

Mr. BURNS. Mr. President, I rise today to introduce a piece of legislation that helps a large number of family farmers on the border of Montana and North Dakota. The Lower Yellowstone Irrigation Projects Title Transfer moves ownership of these irrigation projects from Federal control to local control. Both the Bureau of Reclamation and those relying on the projects for their livelihoo agree there is little value in having the Federal Government retain ownership.

I introduced this legislation in the last Congress, and continue to believe it helps us to achieve the long term goals of Montana and North Dakota. The mission of the Bureau of Reclamation. Just this week I attended the confirmation hearing of John W. Keys, III, who is the designee for Commissioner of the Bureau of Reclamation. I asked his position on title transfers of irrigation projects like the Lower Yellowstone, where local irrigation districts have successfully managed the Federal properties, and where the Bureau has encouraged the transfer of title to the Districts. His response to me was very encouraging. He stated this type of title transfer “makes sense and is an opportunity to move facilities from Federal ownership to more appropriate control.” He has promised to work with me and the Irrigation District to make this a reality, and I look forward to it.

The history of these projects dates to the early 1900’s with the original Lower Yellowstone project being built by the Bureau of Reclamation between 1906 and 1910. The Savage Unit was added in 1947-48. The end result was the creation of fertile, irrigated land to help spur economic development in the area. To this day, agriculture is the number one industry in the area.

The local impact of the projects is measurable in numbers, but the greatest impacts can only be seen by visiting the area. About 500 family farms rely on these projects for economic substance, and the entire area relies on these irrigated lands to create economic development in the area. To this day, agriculture is the number one industry in the area.

As we all know, the agricultural economy is not as strong as we’d like it to be, but these irrigated lands offer a reasonable return over time and are the foundation for strong communities based upon the ideals that have made this country successful. The 500 families that rely on these irrigated lands as their primary means of income, and I can think of no better way to help them to continue producing and offering a foundation for the businesses in the area.

To booms and busts in oil, gas, and other industries, the projects from Federal control to local control and those relying on the projects for their livelihood agree there is little value in having the Federal Government retain ownership.

The local impact of the projects is measurable in numbers, but the greatest impacts can only be seen by visiting the area. About 500 family farms rely on these projects for economic substance, and the entire area relies on these irrigated lands to create economic development in the area. To this day, agriculture is the number one industry in the area.

As we all know, the agricultural economy is not as strong as we’d like it to be, but these irrigated lands offer a reasonable return over time and are the foundation for strong communities based upon the ideals that have made this country successful. The 500 families that rely on these irrigated lands as their primary means of income, and I can think of no better way to help them to continue producing and offering a foundation for the businesses in the area.

I know the agricultural community is not as strong as we’d like it to be, but these irrigated lands offer a reasonable return over time and are the foundation for strong communities based upon the ideals that have made this country successful. The 500 families that rely on these irrigated lands as their primary means of income, and I can think of no better way to help them to continue producing and offering a foundation for the businesses in the area.

I believe this legislation will make a difference, and I ask unanimous consent that the Senate be excused and that the bill be referred to the Committee on Energy and Natural Resources.
Every day, we see an example of where the Federal Government is taking on a new task. We can debate the merits of these efforts on an individual basis, but I think we can all agree that while the government gets involved in new projects there are many that we can support. One of those is the Las Vegas control. The Lower Yellowstone Projects are a prime example of such an opportunity, and I ask my colleagues to join me in seeing this legislation passed as quickly as possible.

By Mr. SMITH of New Hampshire:
S. 1150. A bill to waive tolls on the Interstate System during peak holiday travel periods; to the Committee on Environment and Public Works.
Mr. SMITH of New Hampshire. Mr. President, I rise today to introduce the Interstate Highway System Toll-Free Holiday Act.
As we move into this Fourth of July holiday to celebrate our nation's 225th birthday, many will do so in true American fashion by loading up the kids and the dog in the family car and heading out for a fun holiday vacation. Unfortunately, for many of those who try to escape their daily lives, trips will quickly turn into frustration. Just as you get on the road and begin that family outing, you are greeted by a screeching halt, faced with what seems to be an endless line that is not moving. Soon the kids will grow restless and angry. You've just reached the end of the line of the first toll booth and the delay and frustration begins. Of course, when you do finally make it to the booth, they take your money. Every holiday, no exception. I want to help make those holiday driving vacations more enjoyable by removing that toll booth frustration. My legislation will provide the much desired relief from all of that holiday grief.
The Interstate Highway System Toll-Free Holiday Act provides that no tolls will be collected and no vehicles will be stopped at toll booths on the Interstate System during peak holiday travel periods.
The exact duration of the toll waivers will be left to the States to determine, but will include, at a minimum, the entire 24 hour period of each legal public holiday. The bill will also authorize the Secretary of Transportation to reimburse the State, at the State's request, for lost toll revenues out of the Mass Transit Account, which is funded by the tax that we all pay when we purchase gas for our cars. I want to keep the State highway funds whole, and, at the same time, provide relief to all those who simply want a hassle-free holiday trip.

There are currently some 2,200 miles of toll facilities on the 42,800 mile Interstate System. On peak holiday travel days, traffic increases up to 50 percent over a typical weekday. In New Hampshire last year, the I-95 Hampton toll booth had a 10 percent average increase in traffic over the four-day Fourth of July weekend compared to the previous weekend. That is equivalent to an additional 8,000 vehicles passing through this one toll booth every day. That increase in volume at the toll sites is not only an inconvenience in time and money, but also adds to safety concerns and, because vehicle emissions are higher when idling, air quality suffers. I am pleased that this bill will alleviate the headaches and problems associated with increased toll booth traffic on holidays.

This is just one of what will be a series of bills that I will be introducing, as the Ranking Member of the Environment and Public Works Committee, to address transportation needs in New Hampshire and across the nation, as we prepare for the reauthorization of the next major comprehensive highway bill in 2003. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:
S. 1150

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.
SEC. 1. WAIVER OF TOLLS ON THE INTERSTATE SYSTEM DURING PEAK HOLIDAY TRAVEL PERIODS.
(a) DEFINITIONS.—In this section, the terms "Interstate System", "public authority", "Secretary", "State", and "State transportation department" have the meanings given in the terms in section 101(a) of title 23, United States Code.
(b) WAIVER.—
(1) IN GENERAL.—No tolls shall be collected, and no vehicle shall be required to stop at a toll booth, for any toll highway, bridge, or tunnel on the Interstate System during any peak holiday travel period determined under paragraph (2).
(2) PEAK HOLIDAY TRAVEL PERIODS.—For the purposes of paragraph (1), the State transportation department or the public authority having jurisdiction over the toll highway, bridge, or tunnel shall determine the number and duration of peak holiday travel periods, which shall include, at a minimum, the 24-hour period of each legal public holiday specified in section 6103(a) of title 5, United States Code.
(c) FEDERAL REIMBURSEMENT.—
(1) IN GENERAL.—For each fiscal year, upon request for reimbursement by the Secretary, the Secretary shall reimburse the State or public authority for the amount of toll revenue not collected by reason of subsection (b) during the fiscal year.
(2) REQUESTS FOR REIMBURSEMENT.—On or before September 30 of a fiscal year, each State or public authority that desires a reimbursement under paragraph (1) shall submit to the Secretary a request for reimbursement, based on actual traffic data, for the amount of toll revenue not collected by reason of subsection (b) during the fiscal year.
(3) USE OF REIMBURSED FUNDS.—A request for reimbursement under paragraph (2) shall include a certification by the State or public authority that the reimbursement will be used only for debt service or for operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and adaptation.
(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this subsection.

By Mr. REID (for himself and Mr. ENSIGN):
S. 1151. A bill to amend the method for achieving quiet technology specified in the National Parks Air Tour Management Act of 2000; to the Committee on Commerce, Science, and Transportation.
Mr. REID. Mr. President, I rise today along with my good friend and colleague from Nevada, Senator ENSIGN, because I am deeply concerned that the Federal Aviation Administration has failed to develop the incentives for quiet technology aircraft.

The bill that we are introducing today, the "Grand Canyon Quiet Technology Implementation Act." completes the Congressional mandates contained in the National Park Air Tour Management Act of 2000 which called for the implementation of "reasonably achievable" quiet technology standards for the Grand Canyon air tour operators.
Key provisions of the Act called for by the Federal Aviation Administration, by April 5th of this year, to: 1. Designate reasonably achievable requirements for fixed-wing and helicopter aircraft necessary for such aircraft to be considered as employing quiet aircraft technology; and 2. Establish criteria for commercial air tour operations by fixed-wing and helicopter aircraft that employ quiet aircraft technology, or explain to Congress why they can't. The agency has failed to comply with any of these provisions.
The Act also provides that operators employing quiet technology shall be exempted from operational flight caps. This relief is essential to the very survival of many of these air tour companies. By not complying with these Congressional mandates, the Federal Aviation Administration places the viability of the Grand Canyon air tour industry in jeopardy.
While Senator ENSIGN and I along with our air tour community have sought to work with the Federal agencies in a cooperative manner, our repeated overtures have been summarily ignored, which forces us to take further legislative action.

Our bill simply requires the Federal Aviation Administration to do its job. It identifies "reasonably achievable" quiet technology standards and provides relief for air tour operators who have spent many millions of dollars of their money voluntarily transitioning to quieter aircraft to help restore natural quiet to the Grand Canyon.
I would like to compliment my good friend from Arizona, Senator JOHN MCCAIN for his vision and leadership in the Senate in recognizing that quieter aircraft was the key to restoring natural quiet to the Grand Canyon. During his tenure as chairman of the Senate Commerce Committee, it was Senator McCAIN who insisted on the quiet technology provisions contained in the National Park Air Tour Management Act.
of 2000. It was Senator MCCAIN who wanted to ensure that those air tour companies which already have made huge investments in current technology quiet aircraft modifications were rewarded for their initiative. It was Senator MCCAIN, an advocate for restoring national quiet to the Grand Canyon, who took the lead in seeking to ensure that the elderly, disabled and time-constrained visitor still would be able to enjoy the magnificence of the Grand Canyon by air. The legislation we are discussing today, supports Senator McCaids vision.

The National Park Air Tour Management Act of 2000 is clear. It calls for the implementation of "reasonably achievable" quiet technology incentives. Our Grand Canyon Quiet Technology Implementation legislation is based on today's best aircraft technology.

Some may ask what is "reasonably achievable?" It constitutes the following: replacing smaller aircraft with larger ones; aircraft with increased seating capacity reducing the number of flights needed to carry the same number of passengers; adding propellers to turbine-powered airplanes or main rotor blades on helicopters which reduces prop tip speeds by reducing engine RPMs; modifying engine exhaust systems with high-tech mufflers to absorb engine noise; modifying helicopter tail rotors with high-tech components for quieter operation.

These modifications typically reduce the sound generated by these aircraft by more than 50 percent.

This is what is "reasonably achievable" in aviation technology. In the year 2001, this is essentially all that can be done to make aircraft quieter. Operators which have spent millions of dollars to make these modifications, in our view, have complied with the intent of the law and deserve relief.

Let us not forget the original intent of this legislation to help restore natural quiet to the Grand Canyon and, as the 1916 Organic Act directs, to provide for the enjoyment of our national parks "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

Air touring is consistent with the Park Service mission.

Based on current air tour restrictions, more than 1.7 million tourists will be denied access to the Grand Canyon during the next decade at a cost to air tour operators conservatively estimated at $250 million.

Senator Ensign and I agree that, to the extent possible and practical, that the quieter these air tour aircraft can be made to be, the better for everyone. That's why it is so important that the Grand Canyon Quiet Technology Implementation Act be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be referred to as the 'Grand Canyon Quiet Technology Implementation Act'.

SEC. 2. AMENDMENTS TO QUIET AIRCRAFT TECHNOLOGY.

(a) In General.—Section 804 of the National Parks Air Tour Management Act of 2000 (49 U.S.C. 48120 note) is amended by adding to the end the following new subsection:

'(4) ALTERNATIVE QUIET AIRCRAFT TECHNOLOGY.—

'(1) GENERAL RULE.—Notwithstanding any other provision of law, an air tour operator based in Clark County, Nevada or at the Grand Canyon National Park Airport shall be treated as having met the requirements for quiet aircraft technology that apply with respect to commercial air tour operations for tours described in subsection (b), if the air tour operator has met the following requirements:

'(A) The aircraft used by the air tour operator for such tours—

'(i) meets the requirements designated under subsection (a); or

'(ii) if not previously powered by turbine engines, have been modified to be powered by turbine engines after the conversion—

'(I) have a higher number of propellers (in the case of fixed-wing aircraft) or main rotor blades (in the case of helicopters) than the aircraft had before the conversion, thereby resulting in a reduction in prop or blade tip speeds and engine revolutions per minute;

'(II) have current technology exhaust mufflers;

'(III) in the case of helicopters, have current technology quieter tail rotors; or

'(IV) have any other modifications, approved by the Federal Aviation Administration, that significantly reduce the aircraft's sound.

'(B) The air tour operator has replaced, for use in the aircraft with in the quieter aircraft that have more seating capacity, thereby reducing the number of flights needed to transport the same number of passengers.

'(C) The air tour operator can safely demonstrate, through flight testing administered by the Federal Aviation Administration that the aircraft, as modified, meets applicable methodology as accepted as standard, that the tour operator can fly existing aircraft in a manner that achieves a sound signature in the same noise range or having the same or similar sound effect as the aircraft that satisfy the requirements of subparagraph (A) or (B).

'(2) EXEMPTION FROM FLIGHT CAPS.—Any air tour operator that meets the requirements described in paragraph (1), shall be—

'(A) exempt from the operational flight locations referred to in subsection (c) and from flight curfews and any other requirements not imposed solely for reasons of aviation safety; and

'(B) granted air tour routes that are preferred for the quality of the scenic views for—

'(i) tours from Clark County, Nevada to the Grand Canyon National Park Airport; and

'(ii) 'local loop' tours referred to in subsection (b)(2).'

(b) RESTATEMENT OF CERTAIN AIR TOUR ROUTES.—Any air tour route from Clark County, Nevada, to the Grand Canyon National Park Airport, Tusayan, Arizona, that was eliminated, or altered in any way, by regulation or by action by the Federal Aviation Administration, on or after January 1, 2001, and before the date of enactment of this Act shall be reinstated effective as of such date of enactment and no further changes, modifications, or elimination of any other air tour route flown by an air tour company based in Clark County, Nevada or at the Grand Canyon National Park Airport, Tusayan, Arizona may be made after such date of enactment without the approval of Congress.

By Mr. CRAIG (for himself and Mrs. FEINGOLD and THOMAS),

S. 1153. A bill to amend the Food Security Act of 1985 to establish a grassland reserve program to assist owners in restoring and protecting grassland; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. CRAIG. Mr. President, I rise today to introduce the "Grassland Reserve Act", a bill to authorize a voluntary program to purchase permanent conservation easements on already privately owned grasslands to protect them from conversion to other uses, and to establish an assistance program to assist owners in restoring and protecting grasslands.

Grasslands provided critical habitat for complex plant and animal communities throughout much of North America. However, many of these lands have been, and are under pressure to be, converted to other uses, threatening and eliminating plant and animal communities unique to this continent. A significant portion of the remaining grasslands occur on working ranchlands. Ranchland provides important open-space buffers for animal and plant habitat. Moreover, ranching forms the economic backbone for much of rural western United States. Loss of this economic activity will invariably lead to the loss of the open space that is indispensable for plant and animal communities and for citizens who love the western style of life.

As a rancher from a rural community in which I have watched many changes taking place in some parts of my State where, for a number of reasons, working ranchers have been sold into ranchettes leaving the landscape divided by fences and homes where cattle and wildlife once roamed. Currently, no Federal programs exist to conserve grasslands, ranches, and other lands of high resource values, other than wetlands, on a national scale. I believe the United States needs a voluntary program to conserve these lands and the Grasslands Reserve Act does just that.

Specifically, this bill establishes the Grasslands Reserve program through the Natural Resources Conservation Service to assist owners in restoring and conserving those lands that are essential to the health of our natural resources.

I ask unanimous consent that the text of the Grand Canyon Quiet Technology Implementation Act be printed in the RECORD.
working ranches, other areas that contain animal or plant populations of significant ecological value, and land that is necessary for the efficient administration of the easement.

The terms of the easements allow for grazing in a manner consistent with maintaining the viability of native grass species. All uses other than grazing, such as hay production, may be implemented according to the terms of a written agreement between the landowner and the easement holder. Easements prohibit the production of row crops, and other activities that disturb the surface of the land covered by the easement. The Secretary will work with the State technical committees to establish criteria to evaluate and rank applications for easements which will emphasize support for grazing operations, plant and animal biodiversity, and native grass and shrubland under the greatest threat of conversion. The Secretary may prescribe terms to the easement outlining how the land shall be restored including duties of the land owner and the Secretary. If the easement is violated, the Secretary may require the owner to refund all or part of the payments including interest. The Secretary may conduct periodic inspections, after providing notice to the owner, to determine that the landowner is in compliance with the terms of the easement. The easement may be held and enforced by a private conservancy, land trust organization, or a State agency in lieu of the Secretary, if the Secretary determines that granting such permission will promote grassland protection and the landowner agrees.

This legislation requires the Secretary to make payments for permanent easements based on the fair market value of the land less the grazing value of the land encumbered by the easement, and for 30 year easements the payment would be 30 percent of the fair market value of the land less the grazing value of the land encumbered by the easement. Payments may be made in one lump sum or over a 10 year period. Landowners may also choose to enroll their land in a 30-year rental agreement instead of a 30-year easement where the Secretary would make thirty annual payments which approximate the value of a lump sum payment the owner would receive under a 30-year easement. The Secretary is required to assess the payment schedule every five years to make sure that the payments do approximate the value of a 30-year easement. USDA is also required to cover up to 75 percent of the cost of restoration and provide owners with technical assistance to ensure the easement and restore the land.

I believe this legislation fills a need we have in our agriculture policy and I look forward to working with other members to include the Grasslands Reserve program in a responsible and balanced farm bill.

Mrs. FEINSTEIN. Mr. President, today I am pleased to join my colleagues from Idaho to introduce legislation that provides fair compensation to producers and other landowners who maintain open spaces for plants and animals to thrive.

This bill creates a voluntary program authorizing the United States Department of Agriculture, USDA, to obtain either 30-year or permanent easements from landowners in exchange for a cash payment. Easements allow for grazing while maintaining the viability of native grasses. Over time, these uses must only occur upon the conclusion of the local bird nesting season.

Vast amounts of grassland are being lost to urban development every year in large part because of economic pressures faced by ranchers, livestock producers, and other grassland owners.

Currently, there are no long-term programs to protect grasslands on a national scale. The Grassland Reserve Program provides real options to financially-stressed land owners of grasslands who wish to keep their lands in a natural state. There is a need for this bill because existing programs to protect lands, such as the Forest Legacy program, target forested lands only.

This legislation results in a win-win situation for both the environment and people who make their livelihood on grasslands. The loss of grassland is a serious problem for preserving wildlife habitat and a rural way of life. This bill is a step in the right direction to protect these lands from future development.

I have always felt that protecting our Nation’s unique natural areas, including grasslands, should be one of our highest priorities. I invite my colleagues to join Senator CRAIG and me in supporting this legislation.

By Mr. LEVIN (for himself and Mr. WARNER) (by request):

S. 1155. A bill to authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2002, and for other purposes; to the Committee on Armed Services.

Mr. LEVIN. Mr. President, I ask unanimous consent that the text of the President’s request for Defense and the text of the bill be printed in the RECORD, including the section-by-section analysis.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1155

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Defense Authorization Act for Fiscal Year 2002”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Title I—Procurement
Authorization of Appropriations

Sec. 101. Army.

Sec. 102. Navy and Marine Corps.

Sec. 103. Air Force.

Sec. 104. Defense-Wide Activities.


Sec. 106. Defense Health Program.

TITLE II—Research, Development, Test, and Evaluation

Sec. 201. Authorization of Appropriations.

TITLE III—Operation and Maintenance

Subtitle A—Authorization of Appropriations

Sec. 301. Operation and Maintenance Funding.

Sec. 302. Working Capital Funds.

Sec. 303. Armed Forces Retirement Home.

Sec. 304. Acquisition of Logistical Support for Security Forces.


Subtitle B—Environmental Provisions

Sec. 310. Reimbursement for Certain Costs in Connection with Hooper Sands Site, in South Berwick, Maine.

Sec. 311. Extension of Pilot Program for the Sale of Air Pollution Emission Reduction Credits.

Sec. 312. Elimination of Report on Contractor Reimbursement Costs.

Subtitle C—Commissaries and Nonappropriated Fund Instrumentalities

Sec. 315. Costs Payable to the Department of Defense and Other Federal Agencies for Services Provided to the Defense Commissary Agency.

Sec. 316. Reimbursement for Non-Commissary Use of Commissary Facilities.

Sec. 317. Commissary Contracts and Other Agencies and Instrumentalities.

Sec. 318. Operation of Commissary Stores.

Subtitle D—Other Matters

Sec. 320. Reimbursement for Reserve Intelligence Support.


TITLE IV—Military Personnel Authorizations

Subtitle A—Active Forces

Sec. 401. End Strengths for Active Forces.

Subtitle B—Reserve Forces

Sec. 405. End Strengths for Selected Reserve.


Sec. 407. End Strengths for Military Technicians (Dual Status).

Sec. 408. Fiscal Year 2002 Limitation on Number of Non-Dual Status Technicians.

Sec. 409. Authorized Strengths: Reserve Officers and Senior Enlisted Members on Active Duty or Full-Time National Guard Duty for Administration of the Reserves or National Guard.

Sec. 410. Increase in Authorized Strengths for Air Force Officers on Active Duty in the Grade of Major.

TITLE V—Military Personnel Policy

Subtitle A—Officer Personnel Policy

Sec. 501. Elimination of Certain Medical and Dental Requirements for Army Early-Deployers.

Sec. 502. Medical Deferment of Mandatory Retirement or Separation.

Sec. 503. Officer in Charge; United States Navy Band.

Sec. 504. Removal of Requirement for Certification to the Secretary of the Navy of Officers to Retire in Their Highest Grade.
Subtitle B—Reserve Component Personnel Policy
See. 511. Retirement of Reserve Personnel.
See. 512. Amendment to Reserve PERS-TEMPO Definition.
See. 514. Benefits and Protections for Members in a Funeral Honors Duty Status.
See. 515. Funeral Honors Duty Performed by Members of the National Guard.
See. 516. Strength and Grade Ceiling Accounting for Reserve Component Members on Active Duty in Support of a Contingency Operation.
See. 517. Reserve Health Professionals Stipend Program Expansion.
See. 518. Reserve Officers on Active Duty for a Period of Three Years or Less.
See. 519. Active Duty End Strength Exemption for National Guard and Reserve Personnel Performing Funeral Honors Functions.
See. 520. Clarification of Functions That May Be Assigned to Active Guard and Reserve Personnel on Full-Time National Guard Duty.
See. 521. Authority for Temporary Waiver of the Requirement for a Baccalaureate Degree for Promotion of Certain Reserve Officers of the Army.
See. 522. Authority of the President to Suspend Certain Laws Relating to Promotion, Retirement and Separation; Duties of Secretary of Defense.
Subtitle C—Education and Training
See. 531. Authority for the Marine Corps University to Award the Degree of Master of Strategic Studies.
See. 532. Reserve Component Distributed Learning.
See. 533. Repeal of Limitation on Number of Junior Reserve Officers’ Training Corps (JROTC) Units.
See. 534. Modification of the Nurse Officer Candidate Accession Program Restriction on Students Attending Civilian Educational Institutions with Senior Reserve Officers’ Training Programs.
Subtitle D—Decorations, Awards, and Commendations
See. 541. Authority for Award of the Medal of Honor to Humbert R. Versace for Valor During the Vietnam War.
See. 543. Repeal of Limitation on Award of Bronze Star to Members in Receipt of Special Pay.
Subtitle E—Uniform Code of Military Justice
See. 551. Revision of Punitive UCMJ Article Regarding Drunken Operation of Vehicle, Aircraft, or Vessel.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS
Subtitle A—Pay and Allowances
See. 601. Increase in basic pay for fiscal year 2002.
See. 603. Funeral Honors Duty Allowance for Retirees.
See. 604. Basic Pay Rate for Certain Reserve Commissioned Officers with Prior Service as an Enlisted Member or Warrant Officer.
See. 605. Family Separation Allowance.
See. 606. Housing Allowance for the Chaplain for the Corps of Cadets, United States Military Academy.
See. 607. Clarifying Amendment that Space-Required Travel for Annual Training Reserve Duty Does Not Obliviate Transportation Allowances.
Subtitle B—Bonuses and Special and Incentive PAYS
See. 610. Authorize the Secretary of the Navy to Prescribe Submarine Duty Incentive Pay Rates.
See. 611. Extension of Authorities Relating to Payment of Other Bonuses and Special Pays.
See. 613. Extension of Authorities Relating to Nuclear Officer Special Pays.
See. 615. Extension of Special and Incentive Pays.
Subtitle C—Travel and Transportation Allowances
See. 621. Funded Student Travel: Exchange Programs.
See. 622. Payment of Vehicle Storage Costs in Advance.
See. 623. Travel and Transportation Allowances for Families Members to Attend the Burial of a Deceased Member of the Armed Forces.
See. 624. Shipment of Privately Owned Vehicles When Executing CONUS Permanent Change of Station Moves.
Subtitle D—Miscellaneous
See. 631. Montgomery G I Bill—Selected Reserve Component Members.
See. 632. Improved Disability Benefits for Certain Reserve Component Members.
See. 633. Acceptance of Scholarships by Officers Participating in the Funded Legal Education Program.

TITLE VII—ACQUISITION POLICY AND ACQUISITION MANAGEMENT
Subtitle A—Acquisition Policy
See. 701. Acquisition Milestone Changes.
See. 702. Clarification of Inapplicability of the Requirement for Core Logistics Capabilities Standards to the Nuclear Refueling of an Aircraft Carrier.
See. 703. Depot Maintenance Utilization Waiver.
Subtitle B—Acquisition Workforce
See. 705. Acquisition Workforce Qualifications.

TITLE VIII—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT
Subtitle A—Department of Defense Organizations and Positions
See. 801. Organizational Alignment Change for Director for Expeditionary Warfare.
See. 803. Change of Name for Air Mobility Command.
See. 804. Transfer of Intelligence Positions in Support of the National Imagery and Mapping Agency.
Subtitle B—Reports
See. 811. Amendment to National Guard and Reserve Component Equipment: Annual Report to Congress.
See. 813. Change in Due Date of Commercial Activities Report.
Subtitle C—Other Matters
See. 821. Documents, Historical Artifacts, and Obsolete or Surplus Material: Loan, Donation, or Exchange.
See. 822. Charter Air Transportation of Members of the Armed Forces.

TITLE IX—GENERAL PROVISIONS
Subtitle A—Matters Relating to Other Justice Projects
See. 901. Test and Evaluation Initiatives.
See. 902. Cooperative Research and Development Projects: Allied Countries.
See. 903. Recognition of Assistance from Foreign Nationals.
See. 904. Personal Service Contracts in Foreign Areas.
Subtitle B—Department of Defense Civilian Personnel


Sec. 912. Authority for Designated Civilian Employees Abroad to Act as a Notary Public.

Sec. 913. Inapplicability of Requirement for Studies and Reports When All Duly Authorized and Required Funds of the Department of Defense Civilian Employees Are Reassigned to Comparable Federal Positions.

Sec. 914. Preservation of Civil Service Rights for Employees of the Former Defense Mapping Agency.

Sec. 915. Financial Assistance to Certain Employees in Acquisition of Critical Skills.

Sec. 916. Pilot Program for Payment of Re-training Expenses.

Subtitle C—Other Matters

Sec. 921. Authority to Ensure Demilitarization of Significant Military Equipment Formerly Owned by the Department of Defense.

Sec. 922. Motor Vehicles: Documentary Requirements for Transportation for Military Personnel and Federal Employees on Change of Permanent Station.

Sec. 923. Department of Defense Gift Initiative.

Sec. 924. Repeal of the Joint Requirements Oversight Council Semi-Annual Report.

Sec. 925. Access to Sensitive Unclassified Information.

Sec. 926. Water Rights Conveyance, Andersen Air Force Base, Guam.

Sec. 927. Repeal of Requirement For Separate Budget Request For Procurement of Reserve Equipment.

Sec. 928. Repeal of Requirement for Two-Year Budget Cycle for the Department of Defense.

TITLE I—PROCUREMENT

Authorization of Appropriations

Sec. 101. Army.

Sec. 102. Navy and Marine Corps.

Sec. 103. Air Force.

Sec. 104. Defense-Wide Activities.


Sec. 106. Defense Health Program.

SEC. 101. ARMY.

Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement for the Army as follows:

(1) For aircraft, $1,925,491,000.
(2) For missiles, $3,235,536,000.
(3) For procurement of ammunition, $965,344,000.
(4) For other procurement, $4,097,576,000.
(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement for the Marine Corps in the amount of $987,711,000.
(c) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement of ammunition for the Navy and Marine Corps in the amount of $457,099,000.

SEC. 102. AIR FORCE.

Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement for the Air Force as follows:

(1) For aircraft, $10,744,458,000.
(2) For missiles, $3,235,536,000.
(3) For procurement of ammunition, $965,344,000.
(4) For other procurement, $8,158,521,000.

SEC. 104. DEFENSE-WIDE ACTIVITIES.

Funds are hereby authorized to be appropriated for fiscal year 2002 for defense-wide procurement in the amount of $1,603,927,000.

SEC. 105. DEFENSE INSPECTOR GENERAL.

Funds are hereby authorized to be appropriated for fiscal year 2002 for procurement for the Defense Inspector General in the amount of $1,800,000.

SEC. 106. DEFENSE HEALTH PROGRAM.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the Department of Defense for carrying out health care programs, projects, and activities of the Department of Defense in the total amount of $277,517,000.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Sec. 201. Authorization of Appropriations.

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the use of the Armed Forces for research, development, test, and evaluation, as follows:

(1) For the Army, $6,693,920,000.
(2) For the Navy, $11,153,389,000.
(3) For the Air Force, $14,343,582,000.
(4) For defense-wide research, development, test, and evaluation, $15,268,142,000, of which $217,355,000 is authorized for the Director of Operational Test and Evaluation.
(5) For the Defense Health Program, $65,304,000.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Sec. 301. Operation and Maintenance Fund.

Sec. 302. Working Capital Funds.

Sec. 303. Armed Forces Retirement Home.

Sec. 304. Acquisition of Logistical Support for Security Forces.


SEC. 301. OPERATION AND MAINTENANCE.

Funds are hereby authorized to be appropriated for fiscal year 2002 for operation and maintenance for—

(1) For the Army, $21,191,680,000.
(2) For the Navy, $14,343,982,000.
(3) For the Air Force, $14,343,982,000.
(4) For the Defense Health Program, $1,800,000.
(5) For other procurement, $8,158,521,000.
(6) For the Marine Corps Reserve, $1,787,246,000.
(7) For the Naval Reserve, $1,003,690,000.
(8) For the Air Force Reserve, $2,029,866,000.
(9) For the Air National Guard, $3,677,359,000.
(10) For the Air Force General, $3,867,361,000.
(11) For the Defense Inspector General, $156,221,000.
(12) For the United States Court of Appeals for the Armed Forces, $9,096,000.
(13) For Environmental Restoration, Army, $389,800,000.
(14) For Environmental Restoration, Navy, $257,517,000.
(15) For Environmental Restoration, Air Force, $385,437,000.
(16) For Environmental Restoration, Defense-wide, $23,492,000.
(17) For Environmental Restoration, Air Force, $383,437,000.
(19) For Overseas Contingency Operations, Air Force, $2,844,000.
(20) For Overseas Contingency Operations, Navy, $4,184,000.
(21) For Overseas Contingency Operations, Marine Corps, $257,517,000.
(22) For Support for International Sporting Competitions, Defense, $15,800,000.

SEC. 302. WORKING CAPITAL FUNDS.

Contract authority is hereby authorized to be appropriated for fiscal year 2002 for the use of the Armed Forces of the United States and other activities and agencies of the Department of Defense for providing capital and revolving funds to the Department of Defense in the total amount of $71,440,000 for the operation of the Armed Forces Retirement Home, including the United States Soldiers’ and Airmen’s Home and the Naval Home.

SEC. 303. ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2002 from the Operations and Maintenance Fund of the Department of Defense for the Armed Forces Retirement Home Trust Fund the sum of $71,440,000 for the operation of the Armed Forces Retirement Home, including the United States Soldiers’ and Airmen’s Home and the Naval Home.

SEC. 304. ACQUISITION OF LOGISTICAL SUPPORT FOR SECURITY FORCES.

Section 5 of the Multinational Force and Observers Participation Resolution (Public Law 97-132; 96 Stat. 1960; 22 U.S.C. 3424) is amended by adding at the end the following new subsection:

“(a) The United States may use contractors or other means to provide logistical support to the Multinational Force and Observers under this section in lieu of providing such support through a logistical support unit comprised of members of the armed forces. Notwithstanding subsections (a) and (b) and section 7(b), support by a contractor or other means under this subsection may be provided without reimbursement, whenever the President determines that such action enhances or supports the national security interests of the United States.”.

SEC. 305. CONTRACT AUTHORITY FOR DEFENSE WORKING CAPITAL FUNDS.

Contract authority in the amount of $427,100,000, to remain available until September 30, 2002, is hereby authorized and appropriated for the Defense Working Capital Fund for the procurement, lease-purchase with substantial private sector risk, capital or operating multiple-year lease, of a capital asset, multiple-year time charter, commercial craft or vessel and associated services.
S7208

CONGRESSIONAL RECORD — SENATE
June 29, 2001

Sec. 311. Extension of Pilot Program for the Sale of Air Pollution Emission Reduction Incentives.

Sec. 312. Elimination of Report on Commissary Reimbursement Handling of Hazardous Substance Superfund.

SEC. 310. REIMBURSE FOR CERTAIN COSTS IN CONNECTION WITH HOOPER SANDS SITE, IN SOUTH BERWICK, MAINE.

(a) AUTHORITY TO REIMBURSE EPA.—Using funds described in subsection (b), the Secretary of the Navy may pay $1,063,478.90 to the Hooper Sands Special Account within the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986 (26 U.S.C. 9507). The Secretary may reimburse the Environmental Protection Agency in full for the Remaining Past Response Costs incurred by the agency for actions taken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.) at the Hooper Sands site in South Berwick, Maine, pursuant to an Interagency Agreement entered into by the Department of the Navy and the Environmental Protection Agency in January 2001.

(b) SOURCE OF FUNDS.—Any payment under subsection (a) shall be made using the amounts authorized to be appropriated by paragraph (15) of section 301 to the Environmental Restoration, Navy account, established by section 270(a)(3) of title 10, United States Code.

SEC. 311. EXTENSION OF PILOT PROGRAM FOR THE SALE OF AIR POLLUTION EMISSION REDUCTION INCENTIVES.

Section 351(a) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–180; 112 Stat. 1299, 1692) is amended to read as follows:

“(2) The Secretary may carry out the pilot program during the period beginning on the date of enactment of this Act through September 30, 2003.”

SEC. 312. ELIMINATION OF REPORT ON CONTRACTOR REIMBURSEMENT COSTS.

Section 2706 of title 10, United States Code, is amended by striking subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

Subtitle C—Commissaries and Nonappropriated Fund Instrumentalities

Sec. 315. Costs Payable to the Department of Defense and Other Federal Agencies for Services Provided to the Defense Commissary Agency for Off-Contract Use of Commissary Facilities.

Sec. 316. Reimbursement for Non-Commissary Use of Commissary Facilities.

Sec. 317. Commissary Contracts and Other Agreements and Instrumentalities.

Sec. 318. Operation of Commissary Stores.

Sec. 319. COSTS PAYABLE TO THE DEPARTMENT OF DEFENSE AND OTHER FEDERAL AGENCIES FOR SERVICES PROVIDED TO THE DEFENSE COMMISSARY AGENCY.

Section 2482(b)(1) of title 10, United States Code, is amended by striking “of a private person” and all that remains to the end of the subsection.

Subtitle D—Other Matters

Sec. 320. Reimbursement for Reserve Intelligence Support.

Sec. 321. DISPOSAL OF OBSELETE AND EXCESS MATERIALS CONTAINED IN THE NATIONAL DEFENSE STOCKPILE.

SEC. 320. REIMBURSEMENT FOR RESERVE INTELLIGENCE SUPPORT.

(a) Appropriations available to the Department of Defense for operations and maintenance may be used to reimburse National Guard and Reserve units for services provided by the Agency when the service provided by the Agency is a Defense working capital fund activity which exceeds the price at which the service could be procured through full and open competition, as such term is defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 404(6)) and in the Defense Commissary Agency may pay a Defense working capital fund activity those administrative costs it would be required to pay for the provision of such services had the Defense Commissary Agency acquired them under full and open competition. Under no circumstances with respect to such reimbursement may the Agency be required to include in rates charged the Defense Commissary Agency.”

SEC. 316. REIMBURSEMENT FOR NON-COMMISSARY USE OF COMMISSARY FACILITIES.

(a) In General.—Chapter 177 of title 10, United States Code, is amended by inserting at the beginning of the chapter the following new section:

“§2481. Reimbursement for non-commissary use of commissary facilities.

“If a commissary facility acquired, constructed or improved (in whole or in part) with commissary surcharge revenues is used for non-commissary purposes, the Secretary of the military department concerned shall reimburse the commissary for the surcharge revenues for the commissary’s share of the depreciated value of the facility.”

(b) CLERICAL AMENDMENT.—The table of sections at the end of chapter 177 is amended by inserting before the item relating to section 2482 the following new item:

“2481. Reimbursement for non-commissary use of commissary facilities.”

SEC. 317. COMMISSARY CONTRACTS AND OTHER AGENCIES AND INSTRUMENTALITIES.

Section 2482(b) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

“(2) Where the Secretary of Defense authorizes the Defense Commissary Agency to sell limited exchange merchandise as commissary store inventory under section 2486(b)(11) of this title, the Defense Commissary Agency shall enter into a contract or other agreement to obtain such merchandise from established Reserve and National Guard personnel and training procedures.

Subject to the conditions specified in section 10(c) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. § 98h-1(c)), the President may dispose of the following obsolete and excess materials contained in the National Defense Stockpile in the following quantities:

Bauxite, Refractory, 40,000 short tons.
Chromium Metal, 3,512 short tons.
Iridium, 25,140 troy ounces.
Jewel Bearings, 30,273,221 pieces.
Manganese, Ferro HC, 209,074 short tons.
Palladium, 11 troy ounces.
Quartz Crystal, 216,648 pounds.
Tantalum Metal Ingot, 120,226 pounds contained tantalum.
Tantalum Metal Powder, 36,020 pounds contained tantalum.
Thorium Nitrate, 600,000 pounds.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Sec. 401. End Strengths for Active Forces.

Sec. 402. END STRENGTHS FOR ACTIVE FORCES.

The Armed Forces are authorized strengths for active duty personnel as of September 30, 2002, as follows:

(1) The Army, 480,000.
(2) The Navy, 376,000.
(3) The Marine Corps, 172,600.
(4) The Air Force, 358,800.

Subtitle B—Reserve Forces

Sec. 403. End Strengths for Selected Reserve.

Sec. 404. End Strengths for Reserves on Active Duty in Support of the Reserves.

Sec. 405. End Strengths for Military Technicians (Dual Status).

Sec. 406. Fiscal Year 2002 Limitation on Number of Non-Dual Status Reserve Personnel.

Sec. 407. Authorized Strengths: Reserve Officers and Senior Enlisted Members on Active Duty or Full-Time National Guard Duty for Administration of the Reserves or National Guard.

Sec. 408. Increase in Authorized Strengths for Air Force Officers on Active Duty in the Grade of Major.

Sec. 409. END STRENGTHS FOR SELECTED RESERVE FORCES.

(a) In General.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2002, as follows:

(1) The Army National Guard of the United States, 350,000.
(2) The Army Reserve, 265,000.
(3) The Naval Reserve, 93,000.
(4) The Marine Corps Reserve, 39,558.
(6) The Air Force Reserve, 74,700.
(7) The Coast Guard Reserve, 8,000.

(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve may be reduced proportionally by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year, and
The number of civilian employees who are non-dual status technicians of a reserve component of the Army or Air Force as of September 30, 2002, may not exceed the following:

- For the Army Reserve, 1,085.
- For the Air National Guard of the United States, 1,600.
- For the Air Force Reserve, 0.
- For the Air National Guard of the United States, 350.

SEC. 409. AUTHORIZED STRENGTHS: RESERVE OFFICERS AND SENIOR ENLISTED MEMBERS ON ACTIVE DUTY OR FULL-TIME NATIONAL GUARD DUTY FOR ADMINISTRATION OF THE RESERVES OR NATIONAL GUARD.

(a) IN GENERAL.—Section 12011 of title 10, United States Code, is amended by adding the body of the section to read as follows:

“(a) CEILINGS FOR FULL-TIME RESERVE COMPONENT FIELD GRADE OFFICERS.—The number of reserve officers of the reserve component of the Army, Navy, Air Force, and Marine Corps who may be on active duty in the pay grades of O-4, O-5, O-6 for duty described in sections 10211, 10302 through 10305, 12310, or 12402 of this title, or on full-time National Guard duty (other than for training) under section 502(f) of title 32, or section 708 of title 32, may not, at the end of any fiscal year, exceed the number for that grade and reserve component in accordance with the following tables:

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<td>0-5 (LT)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
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</table>

(b) GRADE SUBSTITUTIONS FOR FULL-TIME GUARD DUTY.—Whenever the number of officers serving in any grade for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

SEC. 410. DETERMINATION OF AUTHORIZED CEILINGS.—If the total number of members serving in the grades prescribed in the above tables is between any two consecutive numbers in the first column of the appropriate table, the Secretary of Defense shall specify the number for each of the grades shown in that table, for that component, determined by mathematical interpolation between the respective numbers of the two strengths of the total members of members serving on AGR duty in the first column which are greater or less than the figures listed in the first column of the appropriate table. The Secretary of Defense shall specify the number for each of the grades shown in that table, for that component, determined by mathematical interpolation between the respective numbers of the two strengths of the total members of members serving on AGR duty in the first column which are greater or less than the figures listed in the first column of the appropriate table. The Secretary of Defense shall specify the number for each of the grades shown in that table, for that component, determined by mathematical interpolation between the respective numbers of the two strengths of the total members of members serving on AGR duty in the first column which are greater or less than the figures listed in the first column of the appropriate table.

(d) SECRETARIAL WAIVER.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretaries of the military departments concerned may increase the number of reserve officers that may be on active duty or full-time National Guard duty in a controlled grade authorized pursuant to subsection (a) for the current fiscal year for any of the Reserve components by a number equal to not more than 5% of the authorized strength in that controlled grade.”.

(b) IN GENERAL.—Section 12011 of title 10, United States Code, is amended by adding the body of the section to read as follows:

<table>
<thead>
<tr>
<th>Army National Guard</th>
<th>20,000</th>
<th>15,000</th>
<th>10,000</th>
<th>5,000</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGR Population</td>
<td>0-4 (MAJ)</td>
<td>0-5 (LT)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
</tr>
<tr>
<td>20,000</td>
<td>1,500</td>
<td>850</td>
<td>325</td>
<td>325</td>
<td>325</td>
</tr>
<tr>
<td>15,000</td>
<td>1,650</td>
<td>800</td>
<td>300</td>
<td>300</td>
<td>300</td>
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<tr>
<td>5,000</td>
<td>1,950</td>
<td>950</td>
<td>400</td>
<td>400</td>
<td>400</td>
</tr>
<tr>
<td>0</td>
<td>2,100</td>
<td>1,000</td>
<td>450</td>
<td>450</td>
<td>450</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>U.S. Air Force Reserve—Continued</th>
<th>4,000</th>
<th>3,000</th>
<th>2,000</th>
<th>1,000</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGR Population</td>
<td>0-4 (MAJ)</td>
<td>0-5 (LT)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
</tr>
<tr>
<td>4,000</td>
<td>1,050</td>
<td>520</td>
<td>240</td>
<td>240</td>
<td>240</td>
</tr>
<tr>
<td>3,000</td>
<td>1,260</td>
<td>630</td>
<td>315</td>
<td>315</td>
<td>315</td>
</tr>
<tr>
<td>2,000</td>
<td>1,470</td>
<td>780</td>
<td>390</td>
<td>390</td>
<td>390</td>
</tr>
<tr>
<td>1,000</td>
<td>1,680</td>
<td>890</td>
<td>445</td>
<td>445</td>
<td>445</td>
</tr>
<tr>
<td>0</td>
<td>1,890</td>
<td>1,000</td>
<td>500</td>
<td>500</td>
<td>500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Army National Guard</th>
<th>20,000</th>
<th>15,000</th>
<th>10,000</th>
<th>5,000</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGR Population</td>
<td>0-4 (MAJ)</td>
<td>0-5 (LT)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
</tr>
<tr>
<td>20,000</td>
<td>1,500</td>
<td>850</td>
<td>325</td>
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<td>325</td>
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<tr>
<td>15,000</td>
<td>1,650</td>
<td>800</td>
<td>300</td>
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<td>1,950</td>
<td>950</td>
<td>400</td>
<td>400</td>
<td>400</td>
</tr>
<tr>
<td>0</td>
<td>2,100</td>
<td>1,000</td>
<td>450</td>
<td>450</td>
<td>450</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>U.S. Air Force Reserve</th>
<th>4,000</th>
<th>3,000</th>
<th>2,000</th>
<th>1,000</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGR Population</td>
<td>0-4 (MAJ)</td>
<td>0-5 (LT)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
<td>0-6 (COL)</td>
</tr>
<tr>
<td>4,000</td>
<td>1,050</td>
<td>520</td>
<td>240</td>
<td>240</td>
<td>240</td>
</tr>
<tr>
<td>3,000</td>
<td>1,260</td>
<td>630</td>
<td>315</td>
<td>315</td>
<td>315</td>
</tr>
<tr>
<td>2,000</td>
<td>1,470</td>
<td>780</td>
<td>390</td>
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<td>1,000</td>
<td>1,680</td>
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<tr>
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<td>1,890</td>
<td>1,000</td>
<td>500</td>
<td>500</td>
<td>500</td>
</tr>
</tbody>
</table>
"(b) Grade Substitution for Lower Grade Ceilings.—Whenever the number of members serving in pay grade E-9 for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for pay grade E-8.

"(c) Determination of Authorized Ceilings.—If the total number of members serving in the grades prescribed in the above tables is between, any two consecutive numbers in the first column of the appropriate table, the corresponding authorized strengths for each of the grades shown in that table, for that component, are determined by mathematical interpolation between the respective numbers of the two strengths. If the total numbers of members serving on AG duty in the first column are greater or less than the figures listed in the first column of the appropriate table, the Secretary concerned shall fix the corresponding strengths for the grades shown in that table at the same proportion as reflected in the nearest limit shown in the table.

(d) Secretarial Waiver.—Upon determination by the Secretary of Defense that such action is in the national interest, the Secretary may increase the number of senior reserve enlisted members that may be on active duty or full-time National Guard duty in a controlled grade authorized pursuant to subsection (a) for the current fiscal year for any of the Reserve components by a number equal to not more than 5% of the authorized strength in that controlled grade.

SEC. 410. INCREASE IN AUTHORIZED STRENGTHS FOR AIR FORCE OFFICERS ON ACTIVE DUTY IN THE GRADE OF MAJOR.

The table in section 523(a)(1) of title 10, United States Code, is amended by striking the figures under the heading "Major" relating to the Air Force and inserting the following:

<table>
<thead>
<tr>
<th>E-7 (SCCP)</th>
<th>E-8 (SCCP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000</td>
<td>100</td>
</tr>
<tr>
<td>1,500</td>
<td>150</td>
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<tr>
<td>2,000</td>
<td>200</td>
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<td>2,500</td>
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<tr>
<td>19,500</td>
<td>1950</td>
</tr>
<tr>
<td>20,000</td>
<td>2000</td>
</tr>
</tbody>
</table>

SEC. 421. REMOVAL OF REQUIREMENT FOR CERTIFICATION FOR CERTAIN FLAG OFFICERS TO RETIRE IN THEIR HIGHEST GRADE.

Section 1370(c)(1) of title 10, United States Code, is amended—

(1) by striking "certifies in writing to the President and Congress" and inserting "determining in writing"; and

(2) by adding at the end of the paragraph the following new sentence:

"(f) The Secretary of Defense shall issue regulations to implement this paragraph.

SEC. 425. LIMITATION OF SUBSECTION 5596(d) OF THIS TITLE.

Title V—Military Personnel Policy

Subtitle A—Officer Personnel Policy

Sec. 501. Elimination of Certain Medical and Dental Requirements for Army Early-Deployers.

Sec. 502. Medical Deferment of Mandatory Retirement or Separation.

Sec. 503. Officer in Charge; United States Navy Band.

Sec. 504. Removal of Requirement for Certification for Certain Flag Officers to Retire in Their Highest Grade.


Title VI—Military Personnel Policy

Subtitle B—Navy Personnel Policy


Sec. 507. Elimination of Certain Medical and Dental Requirements for Army Early-Deployers.

"(1) by inserting "(a)" at the beginning of the paragraph;

"(2) by striking "cannot" and inserting "may not"; and

"(3) by adding at the end the following new subparagraph (b):

"(b) An officer whose mandatory retirement or separation under this chapter or chapter 63 of this title is subject to deferral under this section, may be extended for a period not to exceed 30 days following completion of the evaluation requiring hospitalization or medical observation."

Sec. 501. ELIMINATION OF CERTAIN MEDICAL AND DENTAL REQUIREMENTS FOR ARMY EARLY-DEPLOYERS.

Sec. 502. MEDICAL DEFERMENT OF MANDATORY RETIREMENT OR SEPARATION.

Sec. 503. Officer in Charge; United States Navy Band.

"(a) DETAIL AND GRADES.—Chapter 565 of title 10, United States Code, is amended by inserting after section 6221 the following new section:

Sec. 6221a. United States Navy Band: officer in charge.

(2) by adding at the end of the paragraph the following new sentence:

"The Secretary of Defense shall issue regulations to implement this paragraph."

Sec. 504. REMOVAL OF REQUIREMENT FOR CERTIFICATION FOR CERTAIN FLAG OFFICERS TO RETIRE IN THEIR HIGHEST GRADE.

Sec. 1370(c)(1) of title 10, United States Code, is amended—

(1) by striking "certifies in writing to the President and Congress" and inserting "determining in writing"; and

(2) by adding at the end of the paragraph the following new sentence:

"The Secretary of Defense shall issue regulations to implement this paragraph."

Sec. 505. THREE-YEAR EXTENSION OF CERTAIN FORCE DRAWDOWN TRANSITION AUTHORITIES RELATING TO PERSONNEL MANAGEMENT AND BENEFITS.

Sec. 1370(c)(1) of title 10, United States Code, is amended—

(1) by striking "certifies in writing to the President and Congress" and inserting "determining in writing"; and

(2) by adding at the end of the paragraph the following new sentence:

"The Secretary of Defense shall issue regulations to implement this paragraph."

Sec. 506. JUDICIAL REVIEW OF SELECTION BOARDS.

Sec. 507. ELIMINATION OF CERTAIN MEDICAL AND DENTAL REQUIREMENTS FOR ARMY EARLY-DEPLOYERS.

Sec. 508. TIME-IN-RANK REQUIREMENT FOR RETENTION OF GRADE UPON VOLUNTARY RETIREMENT.

Sec. 1370(d)(5) of title 10, United States Code, is amended by striking "December 31, 2001" and inserting "September 30, 2004".

Sec. 509. MINIMUM COMMENDED SERVICE FOR VOLUNTARY RETIREMENT AS AN OFFICER.
BENEFITS.—(1) Section 404(c)(1)(C) of title 37, United States Code, is amended by striking “December 31, 2001” and inserting “September 30, 2004.”


SEC. 506. REVIEW OF ACTIONS OF SELECTION BOARDS.

(a) In General.—Section 1150(a) of title 10, United States Code, is amended by striking “December 31, 2001” and inserting “September 30, 2004.”

(b) RELIEF ASSOCIATED WITH CORRECTIONS OF CERTAIN ACTIONS.—(1) The Secretary concerned shall ensure that a person receives relief under paragraph (2) or (3), as the person may elect, if the person—

(A) was separated or retired from an armed force, the retired reserve or to inactive status in a reserve component, as a result of a recommendation of a selection board; and

(B) became entitled to retention on or restoration to active duty or active status in a reserve component as a result of a correction of the person’s military records under subsection (a)(2). (2)(A) With the consent of a person referred to in paragraph (1), the person shall be retroactively and prospectively restored to the same status, rights, and entitlements (less appropriate offsets against back pay and allowances) in the person’s armed force as the person would have had if the person had not been selected to be separated, retired, or transferred to the retired reserve or to inactive status in a reserve component, as the case may be, as a result of an action corrected under subsection (a). (2)(B) Nothing in subparagraph (A) shall be construed to permit a person to be on active duty in an active status in a reserve component after the date on which the person would have been separated, retired, or transferred to the retired reserve or to inactive status in a reserve component if the person had not been selected to be separated, retired, or transferred to the retired reserve or to inactive status in a reserve component, as the case may be, in an action of a selection board that is corrected under subsection (a). (3) A court of the United States may review a determination by the Secretary concerned under this section limits the jurisdiction of any court of the United States to consider the constitutionality or validity of any provision of law that is in effect on September 30, 2004. (4) Regulations.—(1) The Secretary concerned may prescribe regulations to carry out this section and any action taken thereunder by a special board may be provided for under this section, including the following:

(A) The circumstances under which consideration of a person’s case by a special board is contingent upon application by or for that person.

(B) Any time limits applicable to the filing of an application for consideration.

(2) Regulations prescribed by the Secretary of a military department under this subsection shall be subject to the approval of the Secretary of Defense.

(c) JUDICIAL REVIEW.—(1) A person challenging for any reason the action or recommendation of a special board may petition a court of the United States to set aside a determination by the Secretary concerned on the report of a selection board, is not entitled to relief in any judicial proceeding unless action was taken by a special board under this section, or the Secretary concerned has denied such consideration.

(2) A court of the United States may review a determination by the Secretary concerned under this section if the action taken by the Secretary concerned on the report of a selection board, is not entitled to relief in any judicial proceeding unless action was taken by a special board under this section, or the Secretary concerned has denied such consideration.

(3) A court of the United States may review a determination by the Secretary concerned under this section if the action taken by the Secretary concerned on the report of a selection board, is not entitled to relief in any judicial proceeding unless action was taken by a special board under this section, or the Secretary concerned has denied such consideration.

(d) EXISTING JURISDICTION.—(1) Nothing in this section limits the jurisdiction of any court of the United States under any provision of law to determine the validity of any statute, regulation, or policy relating to selection boards. Any court of the United States, except in the event that any such statute, regulation, or policy is held invalid, the remedies prescribed in this section shall be the sole and exclusive remedies available to any person challenging the recommendation of a special board on the basis of the invalidity.
"(2) Nothing in this section limits authority to correct a military record under section 1552 of this title.

(b) TIMELINESS OF ACTION.—(1) For the purpose of subsection (a),—

(A) if, not later than six months after receipt of a complete application for consideration by a special board, the Secretary concerned shall have neither convened a special selection board nor denied consideration by a special board, the Secretary shall be deemed to have been denied such consideration.

(B) If, not later than one year after the convening of a special board, the Secretary concerned shall not have taken final action on the report of such board, the Secretary shall be deemed to have been denied such consideration.

(2) Under regulations prescribed in accordance with subsection (d), the Secretary concerned may exclude an individual application from the time limits prescribed in this subsection if the Secretary determines that the application warrants a longer period of consideration. The authority of the Secretary of a military department under this paragraph may not be delegated.

(1) DEFINITIONS.—In this section:

(A) includes a board that the Secretary concerned under any authority to consider whether to recommend a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component instead of referring the records of that person for consideration by a previously convened selection board which considered or should have considered that person;

(B) includes a board for the correction of military or naval records convened under section 1552 of this title, if designated as a special board by the Secretary concerned; and

(C) does not include a promotion special selection board convened under section 628 or 15402 of this title.

(2) The term "selection board"—

(A) means a selection board convened under section 573(a), 611(a), 613, 638, 638a, 14101(b), 14701, 14704, or 14705 of this title, and any other board convened by the Secretary concerned under any authority to recommend an appointment, enlistment, reenlistment, assignment, promotion, or retention in the armed forces or for separation, retirement, or transfer to inactive status in a reserve component for the purpose of reducing the number of persons serving in the armed forces; and

(B) does not include—

(i) a board convened under section 573(a), 611(a), or 14101(a) of this title;

(ii) a special board;

(iii) a selection board convened under section 628 of this title; or

(iv) a board for the correction of military records convened under section 1552 of this title.

(2) Nothing in this section limits the authority of the Secretary of a military department to correct a military record under section 1552 of this title.

(c) EFFECTIVE DATE AND APPLICABILITY.—(1) The amendments made by this section shall take effect on the date of the enactment of this Act and, except as provided in paragraph (2), shall apply with respect to any action pending on or after that date without regard to whether a challenge to an action of a selection board of any of the Armed Forces being considered in such proceeding was initiated before, on, or after that date.

(2) The amendments made by this section shall not apply with respect to any action commenced in a court of the United States before the date of the enactment of this Act.


Sec. 516. Strength and Grade Ceiling Accounting for Reserve Component Members on Active Duty in Support of a Contingency Operation. Sec. 517. Reserve Health Professionals Suspend Program Expansion. Sec. 518. Reserve Officers on Active Duty for a Period of Three Years or Less. Sec. 519. Active Duty End Strength Exemption for National Guard and Reserve Personnel Performing Full-Time National Guard Duty. Sec. 520. Authority for Temporary Waiver of the Requirement for the Baccalaureate Degree for Promotion of Certain Reserve Officers of the Army. Sec. 521. Authority of the President to Suspend Certain Laws Relating to Promotion, Retirement and Separation; Duties.

SEC. 511. RETIREMENT OF RESERVE PERSONNEL.

(a) RETIRED RESERVE.—Section 10154(2) of title 10, United States Code, is amended by striking "upon their request".

(b) RETIREMENT FOR FAILURE OF SELECTION OR PROMOTION.—(1) Section 15413 of such title 10 is amended—

(A) in the heading, by inserting "or retirement" after "separation"; and

(B) in paragraph (2), by striking "and applies" and inserting "unless the officer requests not to be transferred to the Retired Reserve" before the semicolon.

(2) The table of sections at the beginning of chapter 1407 of such title 10 is amended by striking the item relating to section 15413 and inserting the following:

"15413. Separation or retirement for failure of selection or promotion."

(c) RETIREMENT FOR YEARS OF SERVICE OR AFTER SELECTION FOR EARLY REMOVAL.—Section 15414 of such title 10 is amended—

(A) in paragraph (1), by striking "and applies" and inserting "unless the officer requests not to be transferred to the Retired Reserve" before the semicolon; and

(B) in paragraph (2), by striking "does not apply for such transfer" and inserting "has requested not to be transferred to the Retired Reserve" after "is not qualified or".

(d) RETIREMENT FOR AGE.—Section 15415 of such title 10 is amended—

(1) by striking "and applies" and inserting "unless the officer requests not to be transferred to the Retired Reserve" before the semicolon; and

(2) in paragraph (2), by striking "does not apply for transfer" and inserting "has requested not to be transferred" following "is not qualified or".

(e) DISCHARGE OR RETIREMENT OF WARRANT OFFICERS FOR YEARS OF SERVICE OR AGE.—(1) Chapter 1207 of such title 10 is amended by adding at the end the following new section:

"12244. Warrant officers: discharge or retirement for years of service or for age.

"Each warrant officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service prescribed by the Secretary concerned shall—

"(1) be transferred to the Retired Reserve, if the warrant officer is so qualified for such transfer, unless the warrant officer requests not to be transferred to the Retired Reserve; or

"(2) if the warrant officer is not so qualified for such transfer or has requested not to be transferred, be discharged."
(2) The table of sections at the beginning of such chapter 1207 of title 10 is amended by adding at the end the following new item: “12244. Warrant officers: discharge or retirement for years of service or for age.”.

(f) DISCHARGE, OR RETIREMENT OF ENLISTED MEMBERS OR VETERANS FOR YEARS OF SERVICE OR AGE.—(1) Chapter 1203 of such title 10 is amended by adding, at the end the following new section:

“12108. Enlisted members: discharge or retirement for years of service or for age.”

(ii) Enlisted member of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the member’s active duty status—

(1) “(a) Retirement for years of service or age.”;

and

(2) “(b) Retirement for years of service or for age.”.

SEC. 512. AMENDMENT TO PERESTOPEN DEFINITION.

Section 991(b) of title 10, United States Code, is amended—

(a) in paragraph (1), by inserting “active before duty service” at the end of the section.

(b) in paragraph (1), by striking “the time it appears” and inserting “. or”.

(c) in paragraph (4), by renumbering subsection (d) and inserting “after.”;

The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“12108. Enlisted members: discharge or retirement for years of service or for age.”.

SEC. 513. INDIVIDUAL READY RESERVE PHYSICAL EXAMINATION REQUIREMENT.

Section 10206 of title 10, United States Code, is amended—

(a) in subsection (a), by striking “Ready Reserve” and inserting “Selected Reserve”;

(b) by redesignating subsection (b) as subsection (c); and

(c) by inserting after subsection (b) the following new subparagraph:

“(b) As determined by the Secretary concerned, each member of the Individual Ready Reserve or Inactive National Guard shall be provided a physical examination, if required—

(1) to determine the member’s fitness for military duty;

or

(2) to determine, attendance at a military school or other career progression requirements.”.

SEC. 514. BENEFITS AND PROTECTIONS FOR MEMBERS IN A FUNERAL HONORS DUTY STATUS.

(a) PERSONS SUBJECT TO THE UNIFORMED CODE OF MILITARY JUSTICE.—Section 802 of title 10, United States Code, is amended—

(1) in subsection (a)(3), by inserting “in a funeral honors duty status” after “on in acti ve-duty training”;

(2) in subsection (d)(2)(B), by inserting “in a funeral honors duty status” after “on inactive-duty training”;

(b) FUNERAL HONORS DUTY DEPENDENTS OF A DECEASED RESERVE COMPONENT MEMBER.—Section 1061 of such title 10 is amended—

(1) in subsection (b)(1), by striking “the first time it appears” and inserting “, or”, and

(f) PAYMENT OF A DEATH GRATUITY.—(1) Section 1476(a) of such title 10 is amended—

(a) in paragraph (1)(A), by the number of general and flag officers on active duty pursuant to paragraph (1) by the authorized daily average number of enlisted members of a reserve component in the armed forces in the pay grades of E-8 and E-9 in a fiscal year pursuant to subsection (a)(1) by the number of enlisted members of a reserve component in that armed force in the pay grades of E-8 and E-9 on active duty under section 12301(d)(2), and

(b) by striking paragraph (2); and

(c) in paragraph (3) (as redesignated), by striking “subsection (c)(1)(B)” and inserting subsection (c)(1)(B)

SEC. 515. FUNERAL HONORS DUTY PERFORMED FOR MEMBERS OF THE NATIONAL GUARD.

Section 1491(b) of title 10, United States Code, is amended by inserting after paragraph (2) the following new paragraph:

“(b) Funeral honor guards—(1) A member of the Army National Guard of the United States who serves as a member of a funeral honor guard shall be considered to be a member of the armed forces for purposes of fulfilling the two member funeral honors detail requirement in paragraph (2).”.

SEC. 516. STRENGTH AND GRADE CEILING ACCOUNTING FOR RESERVE COMPONENT MEMBERS ON ACTIVE DUTY IN SUPPORT OF A CONTINGENCY OPERATIONS.

(a) ACTIVE DUTY STRENGTH ACCOUNTING.—Section 509(c)(5) of title 10, United States Code is amended—

(1) in subparagraph (1), by striking “and” at the end of the subparagraph;

(2) in subparagraph (2), by striking the period and adding “. and” at the end of the subparagraph;

and

(3) by adding the following new subparagraph:

“(3) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number determined by the number of reserve components on active duty under section 12301(d) of this title in support of a contingency operation as defined in section 10(a)(13) of this title.”;

(b) INCREASE IN AUTHORIZED DAILY AVERAGE FOR MEMBERS IN PAY GRADES E-8 AND E-9 ON ACTIVE DUTY UNDER CERTAIN CIRCUMSTANCES.—Section 517 of such title 10 is amended at the end by adding the following new paragraph:

“(c) The Secretary of Defense may increase the authorized daily average number of enlisted members on active duty in an armed force in pay grades E-8 and E-9 in a fiscal year pursuant to subsection (a)(1) by the number of enlisted members of a reserve component in that armed force in the pay grades of E-8 and E-9 on active duty under section 12301(d) of this title in support of a contingency operation as defined in section 10(a)(13) of this title.”;

(c) INCREASE IN AUTHORIZED STRENGTHS FOR COMMISSIONED OFFICERS IN PAY GRADES O-4, O-5 AND O-6 ON ACTIVE DUTY UNDER CERTAIN CIRCUMSTANCES.—Section 523 of such title 10 is amended—

(1) in paragraphs (a)(1) and (a)(2), by striking “subsection (c)” and inserting subsections (c) and (e)”;

and

(2) by adding at the end the following new subsection:

“(e) The Secretary of Defense may increase the authorized total number of commissioned officers serving on active duty at the end of any fiscal year pursuant to subsection (a) by the number of commissioned officers in the reserve component of the Army, Navy, Air Force, or Marine Corps on active duty under section 12301(d)(2) of this title in support of a contingency operation as defined in section 10(a)(13) of this title.”;

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new section:

“12301(d) of this title in support of a contingency operation as defined in section 10(a)(13) of this title.”.

SEC. 517. RECURS HEALTH PROFESSIONALS STIPEND PROGRAM EXPANSION.

(a) PURPOSE OF PROGRAM.—Section 16201(a) of title 10, United States Code, is amended to read as follows:

“(a) ESTABLISHMENT OF PROGRAM.—For the purposes of obtaining adequate numbers of
commissioned officers in the reserve components who are qualified in health professions, the Secretary of each military department may establish and maintain a program to provide assistance under subsection (a) to a partici-
pant to persons engaged in training that leads to a degree in medicine or dentistry, and to a health professions specialty critically needed in wartime. Under such a program, the Secretary concerned may agree to pay a financial stipend to persons engaged in health profession and training in return for a commitment to subsequent service in the Ready Reserve."

(b) MEDICAL AND DENTAL STUDENT STIP-
ENDS.—Section 16201 of title 10 is amended by—

(1) redesignating subsections (b), (c), (d) and (e) as subsections (c), (d), (e) and (f); and

(2) inserting the following new subsection:

"(b) MEDICAL AND DENTAL SCHOOL STU-
DENTS.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

"(A) is eligible to be appointed as an officer in a Reserve component; "(B) is enrolled or has been accepted for enrollment in an institution in a course of study that results in a degree in medicine or dentistry; "(C) signs an agreement that, unless sooner separated, the person will—

"(i) complete the educational phase of the program; "(ii) accept a reappointment or redesigna-
tion within his reserve component, if ten-
dered, based upon his health profession, fol-
lowing satisfactory completion of the edu-
cational and intern programs; and

"(iii) participate in a residency program; and

(D) if required by regulations prescribed by the Secretary of Defense, agrees to apply for, if eligible, and accept, if offered, residency training in a health profession skill which has been designated by the Secretary of De-
fense as a critically needed wartime skill.

"(2) Under the agreement—

"(A) the Secretary of the military depart-
ment concerned shall agree to pay the par-
ticipant a stipend, in the amount determined under subsection (f), for the period or the re-
minder of the period the student is satisfac-
torily completing a degree in medi-
cine or dentistry while enrolled in an accred-
ited medical or dental school; "(B) the participant shall not be eligible to receive or be entitled to receive a second appointment, designation, or assignment as an officer for service in the Ready Reserve; "(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and "(D) the participant shall agree to serve, upon successful completion of the program, one year in the Selected Reserve for each six months, or part thereof, for which the stipend was received and who enters into a subsequent agreement under subsection (c) and successfully com-
pletes a health professions specialty designated by the Secretary of Defense as a spe-
cialty critically needed by the military de-
partment in wartime, the requirement to serve one year in the Ready Reserve may be re-
duced to one year for each year, or part thereof, for which the stipend was provided while enrolled in medical or dental school.

(c) "FACULTY ASSIGNMENT.—Section 16201(c), (as redesignated by section (b)), is amended—

(1) by inserting "WARTIME" following "CRITICAL" in the heading; and

(2) in paragraph (1)(B) by inserting "or has been appointed as a medical or dental officer in the Reserve of the armed force concerned" before the semicolon at the end of the para-
graph.

(d) SERVICE OBLIGATION REQUIRE-
MENT.—Subparagraph (c)(4), (as redesign-
grated by section (b)), is redesignated (c)(5). Subparagraph (d)(2)(D) of subsection (d), (as redesignated by section (b)), are amended by striking "two years" in the Ready Reserve for each year," and inserting "one year in the Ready Re-
serve for each six months.";

(e) CLERICAL AMENDMENTS.—Subparagraphs (2)(A) of subparagraph (a) (as redesignated by section (b)), and subparagraph (2)(2)(A) of subparagraph (d) (as redesignated by section (b)), are amended by striking "subchapter (e)" and inserting "subchapter (c)".

SEC. 518. RESERVE OFFICERS ON ACTIVE DUTY FOR A PERIOD OF THREE YEARS OR LESS.

(a) CLARIFICATION OF EXEMPTION.—Section 641(1)(D) of title 10, United States Code, is amended to read as follows:

"(1)(D) on active duty under section 12301(d) of this title, other than as provided under subparagraph (C), provided the person agrees to serve for three years, or terms of three years, on the reserve active status-list;"

(b) RETROACTIVE APPLICATION.—(1) Officers who were placed on the reserve active status list under section 641(1)(D), as amended by section 521 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-386; 114 Stat. 1644(A-100)), may be considered, as determined by the Secretary concerned, to have been on the active-duty list during the period beginning on the date of enactment of Public Law 106-386 through the date of enactment of this Act.

(2) Officers who were placed on the active duty list on or after October 30, 1997, may, at the discretion of the Secretary concerned, be placed on the reserve active status list upon enactment of this Act, provided they other-
wise meet the conditions specified in section 641(1)(D) as amended by this Act.

SEC. 519. ACTIVE DUTY END STRENGTH EXEM-
PTION FOR NATIONAL GUARD AND RESERVE PERSONNEL PERFORMING FUNERAL HONORS FUNCTIONS.

Section 115(d) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

"(10) Members of reserve components on active duty to prepare for and to perform funeral honors functions for funerals of veterans in accordance with section 1491 of this title.

(11) Members on full-time National Guard duty to prepare for and to perform funeral honors functions for funerals of veterans in accordance with section 1491 of this title."

SEC. 520. CLARIFICATION OF FUNCTIONS THAT MAY BE ASSIGNED TO ACTIVE GUARD OR RESERVE PERSONNEL ON FULL-TIME NATIONAL GUARD DUTY.

Section 12301(b) of title 10, United States Code, is amended by inserting "or a Reserve, who is a member of the National Guard serv-
ing on full-time National Guard duty under section 502(f) of title 32 in connection with functions referred to in subsection (a)," after "on active duty as described in subsection (a)'.

SEC. 521. AUTHORITY FOR TEMPORARY WAIVER OF STUDENT DEBT OR DEFAULT FOR A BAC-
CALAUREATE DEGREE PRO-
MOTION OF CERTAIN RESERVE OFFICERS OR FORMAL SKILLS.

Section 516 of the Strom Thurmond Na-
tional Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 2017) is amended by inserting, after subsection (a), "a Reserve officer whose manda-
tory separations or retirements incident to section 1251 or sections 632-637 of this title are delayed pursuant to invocation of this section, will be afforded the following termination of the suspension before being separated of retired."

Subtitle C—Education and Training

SEC. 531. Authority for the Marine Corps University to award the Degree of Master of Stra-
tegic Studies.

SEC. 532. Reserve Component Distributed Learning.

SEC. 533. Repeal of Limitation on Number of Junior Reserve Officers’ Training Corps programs.

SEC. 534. Modification of the Nurse Officer Candidate Accession Program Restriction on Students At-
tending Educational Institutions with Senior Re-
serve Officers’ Training Pro-
grams.


SEC. 531. AUTHORITY FOR THE MARINE CORPS UNIVERSITY TO AWARD THE DE-
GREE OF MASTER OF STRATEGIC STUDIES.

(a) AUTHORITY TO CONFER DEGREE.—Upon the recommendation of the Director and faculty of the Marine Corps War College of the Marine Corps University, the President of the Marine Corps University may confer the degree of master of strategic studies upon graduates of the college who fulfill the re-
quirements for the degree.

(b) REGULATION.—The Secretary of the Navy shall promulgate regulations under which the Director of the faculty of the Marine Corps War College of the Marine Corps University shall administer the authority in subsection (a).

(e) EFFECTIVE DATE.—The authority to award degrees provided by subsection (a) shall become effective on the date on which the Secretary of the Navy promulgates regulations that the requirements established by the Marine Corps War College of the Marine Corps Uni-
versity for the degree of master of strategic studies are in accordance with generally ap-
plicable requirements for a degree of master of arts.

SEC. 532. RESERVE COMPONENT DISTRIBUTED LEARNING.

(a) COMPENSATION FOR DISTRIBUTED LEARN-
ing.—Section 206(d) of title 37, United States Code, is amended to read as follows:

"(a) A member of a Reserve Component may be paid compensation under this section for the successful completion of courses of instruction undertaken by electronic, paper-
based, or other distributed learning. Distrib-
uted Learning is structured learning that takes place without requiring the physical presence of an instructor. To be compen-
sable, the instruction must be required by law, Department of Defense policy, or service regulation and may be accomplished either independently, or in a group."
(a) Subject to subsection (b), the Commandant of the Defense Language Institute Foreign Language Center (Institute) may confer an Associate of Arts degree in Foreign Language upon graduates of the Institute who fulfill the requirements for the degree.

(b) No degree may be conferred upon any student under this section unless the Provost certifies to the Commandant of the Institute that the student has satisfied all the requirements prescribed for such degree.

(c) The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of Defense.

Subtitle D—Decorations, Awards, and Commendations

Sec. 541. Authority for Award of the Medal of Honor to Humbert R. Versace for Valor During the Vietnam War

Sec. 542. Issuance of Duplicate Medal of Honor

Sec. 543. Repeal of Limitation on Award of Bronze Star to Members in Receipt of Special Pay

Sec. 541. AUTHORITY FOR AWARD OF THE MEDAL OF HONOR TO HUMBERT R. VERSACE FOR VALOR DURING THE VIETNAM WAR.

(a) WAIVER OF TIME LIMITATIONS.—Notwithstanding any time limitations specified in section 3741 of title 10, United States Code, or any other time limitation with respect to the awarding of certain medals to persons who served in the military service, the President may award the Medal of Honor under section 3741 of that title to Humbert R. Versace for the acts of valor referred to in subsection (b).

(b) ACTION DESCRIBED.—The acts of valor referred to in subsection (a) are the acts of Humbert R. Versace between October 29, 1963, and September 26, 1965, while interned as a prisoner of war by the Vietnamese Communist National Liberation Front (Viet Cong) in the Republic of Vietnam.

Sec. 542. ISSUANCE OF DUPLICATE MEDAL OF HONOR.

(a) Section 3747 of title 10, United States Code, is amended—

(1) in the section heading, by adding at the end ""; and

(2) by striking "Any medal of honor" and inserting "(a) REPLACEMENT OF MEDALS.—Any medal of honor."

(b) by inserting "stolen," before "lost or destroyed," and

(c) by adding at the end the following new subsection:

"(b) ISSUANCE OF DUPLICATE MEDAL OF HONOR.—Upon written application by a person to whom a medal of honor has been awarded under this chapter, the Secretary of the Army may issue such person a duplicate medal of honor, with ribbons and appurtenances. Such duplicate medal shall be marked, in a manner the Secretary may determine, as a duplicate or for display purposes only. The issuance of a duplicate medal of honor under this chapter shall not constitute the award of more than one medal of honor within the meaning of section 3744(a) of this title.".

Sec. 543. REPEAL OF LIMITATION ON AWARD OF BRONZE STAR TO MEMBERS IN RECEIPT OF SPECIAL PAY.

(a) STANDARD FOR DRUNKEN OPERATION OF VEHICLE, AIRCRAFT, OR VESSEL.—Paragraph (5) of section 1112 of title 10, United States Code (article III of the Uniform Code of Military Justice), is amended by striking "0.10 grams or more of alcohol" and inserting "0.08 grams or more of alcohol" both places that term appears.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to offenses committed on or after that date.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Sec. 601. Increase in Basic Pay for Fiscal Year 2002

Sec. 602. Partial Dislocation Allowance Authorized Under Certain Circumstances

Sec. 603. Funeral Honors Duty, Allowance for Retirees

Sec. 604. Basic Pay Rate for Certain Reserve Commissioned Officers with Prior Service as an Enlisted Member or Warrant Officer

Sec. 605. Family Separation Allowance

Sec. 606. Housing Allowance for the Chaplain for the Corps of Cadets, United States Military Academy

Sec. 607. Clarify Amendment that Space-Required Travel for Annual Training Reserve Duty Does Not Obviate Transportation Allowances

Sec. 601. INCREASE IN BASIC PAY FOR FISCAL YEAR 2002.

(a) WAIVER OF SECTION 1009 ADJUSTMENT.—The adjustment to become effective during fiscal year 2002 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized members of the uniformed services shall not be made.

(b) INCREASE IN BASIC PAY.—Effective on January 1, 2002, the rates of monthly basic pay for members of the uniformed services shall be as follows:

(1) The item relating to section 3747 of such title in the table of sections at the beginning of chapter 357 of such title is amended to read as follows:

"3747. Medal of honor; distinguished-service cross; distinguished-service medal; silver star; replacement; issuance of duplicate medal of honor."

(2) The item relating to section 6253 of such title in the table of sections at the beginning of chapter 657 of such title is amended to read as follows:

"6253. Replacement; issuance of duplicate medal of honor."

(3) The item relating to section 8747 of such title in the table of sections at the beginning of chapter 857 of such title is amended to read as follows:

"8747. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star; replacement; issuance of duplicate medal of honor."
PAY GRADE

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*Basic pay for 0–7 to 0–10 is limited to the rate of basic pay for pay level III of the Executive Schedule. Basic pay for 0–6 and below is limited to level V of the Executive Schedule.

**While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $13,598.10, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

***While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $5,382.90, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

+Applies to personnel who have served 4 months or more on active duty.
++Applies to personnel who have served less than 4 months on active duty.

SEC. 602. PARTIAL DISLOCATION ALLOWANCE AUTHORIZED UNDER CERTAIN CIRCUMSTANCES.

(a) Authorization of Partial Dislocation Allowance.—Section 407 of title 37, United States Code is amended—

(1) by redesignating subsections (c) through (g) as subsections (d) through (h), respectively;

(2) in subsections (a) and (b), by striking “subsection (c)” and inserting “subsection (d)”;

(3) by inserting after subsection (b) the following new subsection:

“(c) Partial Dislocation Allowance.—(1) Under regulations prescribed by the Secretary concerned, a member ordered to occupy or to vacate Government family housing for the convenience of the Government (including pursuant to the privatization or renovation of housing), and not pursuant to a permanent change of station, may be paid a partial dislocation allowance of $500.

(2) On the effective date that the monthly rates of basic pay for members are increased for a subsequent calendar year, the Secretary of Defense shall adjust the rate for the partial dislocation allowance for that calendar year by the percentage equal to the percentage increase in the rate of basic pay for that calendar year.

(3) Payments made under this subsection are not subject to the fiscal year limitations in subsection (e); and

(4) in subsection (d) as redesignated by paragraph (1), by striking at the beginning “The amount” and inserting “Except as provided in subsection (c), the amount”; and

(b) Effective Date.—The amendments made by this section shall take effect on October 1, 2001.

SEC. 603. FUNERAL HONORS DUTY ALLOWANCE FOR RETIREES.

Section 435 of title 37, United States Code, is amended—

(1) in subsection (a), by inserting before the period at the end “or a retired member of the armed forces who performs at least two hours of duty preparing for or performing honors at the funeral of a veteran”; and

(2) by adding at the end the following new subsection:

“Sec. 435. Funeral Honors Duty Allowance for Retirees.

Section 435 of title 37, United States Code, is amended—

(1) in subsection (a), by inserting before the period at the end “or a retired member of the armed forces who performs at least two hours of duty preparing for or performing honors at the funeral of a veteran”; and
“(d) Concurrent Payment.—Notwithstanding any other provision of law, the allowance paid to a retired member of the armed forces under subsection (a) shall be in addition to any other compensation authorized under title 10, title 37, and title 38 to which the retired member may be entitled.”

SEC. 604. BASIC PAY RATE FOR CERTAIN RE- ENTERED OFFICERS WITH PRIOR SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER.

Section 203(d) of title 37, United States Code, is amended by inserting “, or who earns a total of more than 1,460 points credited under section 602 of title 37 while serving as a warrant officer or as a warrant officer and enlisted member” following “as or a warrant officer and enlisted member”.

SEC. 605. FAMILY ALLOWANCE.

Section 427(c) of title 37, United States Code, is amended by adding the first sentence to read as follows:

“A member who elects to serve an unaccompanied tour of duty because dependent movement to the permanent station is denied for certified medical reasons is entitled to the same basic allowance for housing allowed to a member under subsection (a) of this section.”

SEC. 606. HOUSING ALLOWANCE FOR THE CHAPLAIN FOR THE CORPS OF CADETS, UNITED STATES MILITARY ACADEMY.

Section 4337 of title 10, United States Code, is amended by striking the second sentence and inserting “Notwithstanding any other provision of law, the chaplain is entitled to the same basic allowance for housing allowed to a lieutenant colonel, and to fuel and light for quarters in kind.”

SEC. 607. CLARIFYING AMENDMENT THAT SPACE- REQUIRED TRAVEL FOR ANNUAL TRAINING RESERVE DUTY DOES NOT COUNT AGAINST TRANSPORTATION ALLOWANCES.

Section 18506(a) of title 10, United States Code, is amended by striking “annual training duty” or “annual training” as it appears.

Subtitle B—Bonuses and Special Incentive Pays

Sec. 611. Authorize the Secretary of the Navy to Prescribe Submarine Duty Incentive Pay Rates.

Sec. 612. Extension of Authorities Relating to Payment of Other Bonuses and Special Pays.

Sec. 613. Extension of Certain Bonuses and Special Pay Authorities for Nurse Officer Candidates, Registered Nurses, Nurse Anesthetists, and Dental Officers.

Sec. 614. Extension of Authorities Relating to Nuclear Officer Special Pays.

Sec. 615. Extension of Special and Incentive Pays.

Sec. 616. Accession Bonus for Officers in Critical Skills.

Sec. 617. Critical Warfart Skill Requirement for Eligibility for the Individual Ready Reserve Bonus.

Sec. 618. Hazardous Duty Incentive Pay: CBO.

SEC. 611. AUTHORIZE THE SECRETARY OF THE NAVY TO PRESCRIBE SUBMARINE DUTY INCENTIVE PAY RATES.

(a) In General.—Section 301 of title 37, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) A member who meets the requirements prescribed in subsection (a) and is assigned to monthly submarine duty incentive pay in an amount prescribed by the Secretary of the Navy, but not more than $1,000 per month.”.

(b) Effective Date.—The amendment made by subsection (a) shall take effect on October 1, 2002.

SEC. 612. EXTENSION OF AUTHORITIES RELATING TO PAYMENT OF OTHER BONUSES AND SPECIAL PAYS.

(a) AVIATION OFFICER RETENTION BONUS.—Section 301(a) of title 37, United States Code, is amended by striking “December 31, 2001” and inserting “January 1, 2002”.

(b) RETENTION BONUS FOR ACTIVE MEMBERS.—Section 301(g) of such title 37 is amended by striking “December 31, 2001” and inserting “January 1, 2002”.

(c) RETENTION BONUS FOR MEMBERS QUALIFIED IN A CRITICAL MILITARY SKILL.—Section 301(h) of such title 37 is amended by striking “December 31, 2001” and inserting “September 30, 2003”.

(d) RETENTION BONUS FOR MEMBERS QUALIFIED IN A CERTAIN MILITARY SKILL.—Section 301(i) of such title 37 is amended by striking “December 31, 2001” and inserting “September 30, 2003”.

SEC. 613. EXTENSION OF CERTAIN BONUSES AND SPECIAL PAY AUTHORITIES FOR NURSE OFFICER CANDIDATES, REGISTERED NURSES, NURSE ANESTHETISTS, AND DENTAL OFFICERS.

(a) NURSE OFFICER CANDIDATE ACCESSION PROGRAM.—Section 2130(a)(1) of title 10, United States Code, is amended by striking “December 31, 2001” and inserting “September 30, 2003”.

(b) ACCESSION BONUS FOR REGISTERED NURSES.—Section 302(a)(1) of title 37, United States Code, is amended by striking “December 31, 2001” and inserting “September 30, 2003”.

(c) INCENTIVE SPECIAL PAY FOR NURSE ANESTHETISTS.—Section 302(a)(2) of such title 37 is amended by striking “December 31, 2001” and inserting “September 30, 2003”.

(d) ACCESSION BONUS FOR DENTAL OFFICERS.—Section 302(a)(1) of such title 37 is amended by striking “September 30, 2002” and inserting “September 30, 2003”.

SEC. 614. EXTENSION OF AUTHORITIES RELATING TO NUCLEAR OFFICER SPECIAL PAYS.

(a) SPECIAL PAY FOR NUCLEAR-QUALIFIED OFFICERS EXTENDING PERIOD OF ACTIVE SERVICE.—Section 312(e) of title 37, United States Code, is amended by striking “December 31, 2001” and inserting “December 31, 2003”.

(b) NUCLEAR CAREER ANNUAL INCENTIVE BONUS.—Section 312(e)(1) of such title 37 is amended by striking “December 31, 2001” and inserting “December 31, 2003”.

(c) NUCLEAR CAREER ANNUAL INCENTIVE BONUS.—Section 312(e)(2) of such title 37 is amended by striking “December 31, 2001” and inserting “December 31, 2003”.

SEC. 615. EXTENSION OF SPECIAL AND INCENTIVE PAYS.

(a) SPECIAL PAY FOR RESERVE HEALTH PROFESSIONALS IN CRITICALLY SHORT WARFARE SPECIALTIES.—Section 302(c)(1) of title 37, United States Code, is amended by striking “December 31, 2001” and inserting “December 31, 2002”.

(b) SELECTED RESERVE REENLISTMENT BONUS.—Section 308(b)(1) of such title 37 is amended by striking “December 31, 2001” and inserting “December 31, 2002”.

(c) SELECTED RESERVE ENLISTMENT BONUS.—Section 308(c)(1) of such title 37 is amended by striking “December 31, 2001” and inserting “December 31, 2002”.

(d) SPECIAL PAY FOR ENLISTED MEMBERS ASSIGNED TO CERTAIN HIGH PRIORITY UNITS.—Section 308(c)(1) of such title 37 is amended by striking “December 31, 2001” and inserting “December 31, 2002”.

(e) SELECTED RESERVE AFFILIATION BONUS.—Section 308(f)(1) of such title 37 is amended by striking “December 31, 2001” and inserting “December 31, 2002”.

(f) READY RESERVE ENLISTMENT AND REENLISTMENT BONUS.—Section 308(h)(1) of such title 37 is amended by striking “December 31, 2001” and inserting “December 31, 2002”.

SEC. 616. BONUS AND SPECIAL PAY FOR CERTAIN MILITARY PERSONNEL.

(a) IN GENERAL.—Chapter 5 of title 37, United States Code, is amended by inserting after section 323 the following new section:

“§324. Special Pay; officer critical skills accession bonus.

“(a) ACCESSION BONUS AUTHORIZED.—Under regulations prescribed by the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operated as a service in the Navy, and subject to the limitations in subsection (b), an individual who executes a written agreement to accept a commission as an officer in an armed force and qualify in an officer critical skill for the period specified in the agreement may be paid an accession bonus not to exceed $20,000 upon acceptance of the written agreement by the Secretary concerned.

“(b) LIMITATION ON ELIGIBILITY FOR BONUSES.—An individual may not be paid a bonus under subsection (a) if the individual has received, or is receiving, an accession bonus for the same period of service under subsections 323d, 323h, or 321b.

“§323. Accession and educational training.

“(a) AUTHORIZATION.—The Secretary, or the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operated as a service in the Navy, may require the individual to repay the United States, on a pro rata basis and to the extent that the Secretary determines conditions and circumstances warrant, any and all sums paid to the individual under this section.

“(b) Obligation to repay the United States imposed under paragraph (a) for all purposes a debt owed to the United States.

“(c) Discharge in bankruptcy under title 11 that is entered less than five years after the termination of a written agreement entered into, under subsection (a) does not discharge the individual signing the agreement from a debt arising under such agreement or under paragraph (b).

“(d) Definition.—In this section, the term ‘officer critical skill’ means a skill designated as critical with respect to accession of officers to the skill by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operated as a service in the Navy.

“§322. Special Pay: officer critical skills accession bonus.

“(a) Authorization of bonus.—No bonus may be paid under this section with respect to any agreement to continue on active duty in the armed forces entered into after that date.”.
SEC. 622. TRAVEL AND TRANSPORTATION ALLOWANCES FOR FAMILY MEMBERS TO ATTEND THE BURIAL OF A DECEASED MEMBER OF THE ARMED FORCES.

(a) CONSOLIDATION OF AUTHORITIES.—Section 411f of title 37, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “ALLIANCE AUTHORITIE—(a)” after “(a)”; and

(B) by inserting at the end following new paragraph:

“(2) If a dependent of a deceased member who is authorized travel and transportation allowances under this section is unable to travel unattended to the burial ceremonies of the deceased member—

(i) because of—

(A) age;

(ii) physical condition; or

(iii) other justifiable reason, as determined under uniform regulations prescribed by the Secretaries concerned; and

(B) there is no other dependent qualified for travel and transportation allowances under this section available and qualified to serve as an attendant for the dependent while traveling to and attending the burial ceremonies, an attendant may be paid roundtrip travel and transportation allowances under this section.”; and

(2) in subsection (b)—

(A) by striking “(b)(1) Except as provided in paragraphs (2) and (3)’’; and

(B) by inserting before the period at the end, the following: “and the time necessary for such travel;” and

(3) in subsection (c), by striking “be extended to accommodate” and inserting “not exceed the rates for 2 days and”; and

(4) by adding at the end of subsection (b) the following new paragraph:

“(d) If a deceased member is interred in a cemetery maintained by the American Battle Monuments Commission, the allowances authorized under this section may be provided to and from such cemetery and may not exceed the rates for 2 days and time necessary for such travel.”; and

(5) by amending subsection (c) to read as follows:

“(c) DEFINITIONS.—(1) In this section, the term ‘dependents’ means—

(A) the surviving spouse (including a remarried surviving spouse) of the deceased member and any child of the deceased member as defined in section 401(a)(2); and

(B) if no person described in subparagraph (A) is paid travel and transportation allowances under this section, the parents (as defined in section 401(b)(2)) of the deceased member; or

(C) if no person described in subparagraphs (A) or (B) is paid travel and transportation allowances under this section, the registered or domiciliary widow or widower of the deceased member;

(2) the case of a deceased member whose remains are commingled and buried in a common grave in a national cemetery, the person who would have been designated under section 1482(c) of such title 10 for the disposer of the remains if individual identification had been possible, and two additional persons selected by that person who are closely related to the deceased member;

(3) in this section, the term ‘burial ceremonies’ includes

(A) an interment of casketed or cremated remains; and

(B) a placement of cremated remains in a columbarium:

(‘C) a memorial service for which reimbursement is authorized under section 16133(a)(3) of title 10; and

(‘D) a burial of commingled remains that cannot be individually identified in a common grave in a national cemetery.’’.

(2) Section 204(h)(1) of title 10, United States Code, is amended—

(1) by striking subsection (d) and redesignating subsections (e), (f), and (g) as subsections (d), (e), and (f), respectively.


SEC. 623. TRAVEL AND TRANSPORTATION ALLOWANCES FOR FAMILY MEMBERS TO ATTEND THE BURIAL OF A DECEASED MEMBER OF THE ARMED FORCES.

(a) CONSOLIDATION OF AUTHORITIES.—Section 411f of title 37, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “ALLIANCE AUTHORITIE—(a)” after “(a)”; and

(B) by inserting at the end following new paragraph:

“(2) If a dependent of a deceased member who is authorized travel and transportation allowances under this section is unable to travel unattended to the burial ceremonies of the deceased member—

(i) because of—

(A) age;

(ii) physical condition; or

(iii) other justifiable reason, as determined under uniform regulations prescribed by the Secretaries concerned; and

(B) there is no other dependent qualified for travel and transportation allowances under this section available and qualified to serve as an attendant for the dependent while traveling to and attending the burial ceremonies, an attendant may be paid roundtrip travel and transportation allowances under this section.”; and

(2) in subsection (b)—

(A) by striking “(b)(1) Except as provided in paragraphs (2) and (3)’’; and

(B) by inserting before the period at the end, the following: “and the time necessary for such travel;” and

(3) in subsection (c), by striking “be extended to accommodate” and inserting “not exceed the rates for 2 days and”; and

(4) by adding at the end of subsection (b) the following new paragraph:

“(d) If a deceased member is interred in a cemetery maintained by the American Battle Monuments Commission, the allowances authorized under this section may be provided to and from such cemetery and may not exceed the rates for 2 days and time necessary for such travel.”; and

(5) by amending subsection (c) to read as follows:

“(c) DEFINITIONS.—(1) In this section, the term ‘dependents’ means—

(A) the surviving spouse (including a remarried surviving spouse) of the deceased member and any child of the deceased member as defined in section 401(a)(2); and

(B) if no person described in subparagraph (A) is paid travel and transportation allowances under this section, the parents (as defined in section 401(b)(2)) of the deceased member; or

(C) if no person described in subparagraphs (A) or (B) is paid travel and transportation allowances under this section, the registered or domiciliary widow or widower of the deceased member;

(2) the case of a deceased member whose remains are commingled and buried in a common grave in a national cemetery, the person who would have been designated under section 1482(c) of such title 10 for the disposer of the remains if individual identification had been possible, and two additional persons selected by that person who are closely related to the deceased member;

(3) in this section, the term ‘burial ceremonies’ includes

(A) an interment of casketed or cremated remains; and

(B) a placement of cremated remains in a columbarium:

(‘C) a memorial service for which reimbursement is authorized under section 16133(a)(3) of title 10; and

(‘D) a burial of commingled remains that cannot be individually identified in a common grave in a national cemetery.’’.

(2) Section 204(h)(1) of title 10, United States Code, is amended by inserting before the period at the end, the following: “and inserting ‘14-year’.”

SEC. 624. SHIPMENT OF PRIVATELY OWNED VEHICLES WHEN EXECUTING CONUS PERMANENT CHANGE OF STATION MOVES.

(a) MEDICAL AND DENTAL CARE FOR MEMBERS.—Section 2634(h)(1) of title 10, United States Code, is amended by inserting before the period at the end, the following: “and inserting ‘14-year’.”

(b) MEDICAL AND DENTAL CARE FOR DEPENDENTS.—(1) Section 16133(a)(3) of title 10, United States Code, is amended by inserting before the period at the end, the following: “or if otherwise authorized under applicable regulations”.

(g) An officer detailed at a law school under this section also may accept a fellowship, scholarship, or grant under section 2663 of this title. Any service obligation incurred under this section 2663 shall be served consecutively with the service obligation incurred under subsection (b)(2)(C).

(b) CONFORMING AMENDMENT.—Section 2663 of title 10, United States Code, is amended by adding at the end the following new subsection:

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 economics, industrial management, marketing, quantitative methods, and organization and management;

(C) passed an examination considered by the Secretary to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study in the disciplines listed in subparagraph (B); or

"(D) on October 1, 1991, had at least 10 years of experience in acquisition positions, in comparable positions in other government agencies or the private sector, or in similar positions in which an individual obtains experience directly relevant to the field of contracting.

"(F) WAIVER.—The acquisition career program board concerned may waive any or all of the requirements of subsections (a) and (b) with respect to an individual if the board certifies that the individual possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. With respect to each waiver granted under this section, the board shall set forth in a written document the rationale for its decision to waive such requirements. The document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.

(b) CLERICAL AMENDMENT.—Section 1732(c)(2) of title 10 is amended by inserting a comma between “business” and “finance”.

SEC. 706. TENURE REQUIREMENT FOR CRITICAL ACQUISITION POSITIONS.

Section 734 of title 10, United States Code, is amended—

(1) in paragraph (a)(1), by inserting “as a program manager, deputy program manager, or senior contracting official of a major system, or such other critical acquisition position as the Secretary of Defense may prescribe by regulation,” after “critical acquisition position”;

(2) in paragraph (a)(2), by inserting “as a program manager, deputy program manager, or senior contracting official of a major system, or such other critical acquisition position as the Secretary of Defense may prescribe by regulation,” after “critical acquisition position”.

Subtitle C—General Contracting Procedures and Limitations

Sec. 710. Amendment of Law Applicable to Contractors for Architectural and Engineering Services and Construction Design.

Sec. 711. Streamlining Procedures for the Purchase of Certain Goods.

Sec. 712. Repeat of the Requirement for the Limitations on the Use of Air Force Civil Engineering Supply Function Contracts.

Sec. 713. One-Year Extension of Commercial Items Test Program.

Sec. 714. Modification of Limitation on Retirement or Dismantlement of Strategic Nuclear Delivery Systems.

Sec. 715. Exclusion of Unforeseen Environmental Hazard Remediation Costs from the Limitation on Cost Increases for Military Construction and Family Housing Construction Projects.

Sec. 716. Incurrence of Overseas Minor Construction Threshold Using Operations and Maintenance Funds.

Sec. 717. Leasebacks of Base Closure Property.

Sec. 718. Alternative Authority For Acquisition of Federal Property and common area maintenance shall not include

Sec. 719. Annual Report to Congress on Design And Construction.

Sec. 720. Amendment of Law Applicable to Contracts for Architectural and Engineering Services and Construction Design.

Section 2855 of title 10, United States Code, is amended—

(1) in subsection (b), by striking the section designation “(b)”; and

(2) by striking subsection (b).

SEC. 721. STREAMLINING PROCEDURES FOR THE PURCHASE OF CERTAIN GOODS.

Section 2584(a)(2) of title 10, United States Code, is amended by inserting before the period at the end: “unless the head of a contracting activity determines—

"(A) that the amount of the purchase is $25,000 or less;

"(B) the precision level of the ball or roller bearings is rated lower than Annual Bearing Engineering Committee (ABEC) 5 or Roller Bearing Engineering Committee (RBEC) 5, or their equivalent; or

"(C) at least two manufacturers in the national technology and industrial base capable of producing the ball or roller bearings decline to respond to a query for quotation for the required items, and

"(D) the bearings are neither miniature nor instrument ball bearings, i.e. rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less.”.

SEC. 712. REPEAL OF THE REQUIREMENT FOR LIMITATIONS ON THE USE OF AIR FORCE CIVIL ENGINEERING SUPPLY FUNCTION CONTRACTS.


SEC. 713. ONE-YEAR EXTENSION OF COMMERCIAL ITEMS TEST PROGRAM.


SEC. 714. MODIFICATION OF LIMITATION ON RETIREMENT OR DISMANTLEMENT OF STRATEGIC NUCLEAR DELIVERY SYSTEMS.

Section 303(a) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 112 Stat. 1963, is amended by striking “October 1, 2001” and inserting “October 1, 2002”.)

Subtitle D—Military Construction General Provisions

Sec. 715. Exclusion of Unforeseen Environmental Hazard Remediation Costs from the Limitation on Cost Increases for Military Construction and Family Housing Construction Projects.

Sec. 716. Incurrence of Overseas Minor Construction Threshold Using Operations and Maintenance Funds.

Sec. 717. Leasebacks of Base Closure Property.

Sec. 718. Alternative Authority For Acquisition of Federal Property and common area maintenance shall not include

Sec. 719. Annual Report to Congress on Design And Construction.

Sec. 720. Amendment of Law Applicable to Contracts for Architectural and Engineering Services and Construction Design.

Section 2855 of title 10, United States Code, is amended—

(1) in subsection (b), by striking “$500,000” and inserting “$750,000”.

(2) in subsection (c)(1)(A), by striking “$1,000,000” and inserting “$5,000,000”, and in subsection (c)(1)(B), by striking “$500,000” and inserting “$750,000”.

SEC. 717. LEASEBACKS OF BASE CLOSURE PROPERTY.

(a) 1990 LAW.—Section 2905(b)(4)(E) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–106; 10 U.S.C. 2807 note) is amended as follows:

(1) in clause (iii), by striking “A” and inserting “Except as provided in clause (v) below,”.

(2) by adding at the end the following new clause:

“(v) Notwithstanding clause (iii) or chapter 137 of title 10, United States Code, where the department or agency concerned leases a substantial portion of the installation, the department or agency may obtain, at a rate to the department or agency leasing the land, including lessees, except as provided in clause (iv) below, at a rate less than that charged to non-Federal tenants, facility services for the leased property and common area maintenance from the redevelopment authority or the redeveloper or redeveloper’s assigns for the term of the lease under clause (i). Facility services and common area maintenance shall not include services that the local government is required by law to provide to all landowners in its jurisdiction without direct charge, or for lighting or security-guard functions.

(b) 1998 LAW.—Section 2904(b)(4) of the Defense Authorization Amendments and Base Closure and Realignment Act of (Public Law 105–306; 10 U.S.C. 2807 note) is amended by adding at the end the following new subparagraph (j):

“(j) The Secretary may transfer real property at an installation approved for closure or realignment under this title (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease the real property to another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

“(ii) A lease under clause (i) shall be for a term not to exceed 20 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

“(v) Except as provided in clause (v) below, a lease under clause (i) may not require rental payments by the United States.

“(v) A lease under clause (i) shall include a provision specifying that the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term or five years, whichever is less, whichever would be the time under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

“(v) NOTwithstanding clause (iii) or chapter 137 of title 10, United States Code, where the department or agency concerned leases a substantial portion of the installation, the department or agency may obtain, at a rate less than that charged to non-Federal tenants, facility services for the leased property and common area maintenance from the redevelopment authority or the redeveloper or redeveloper’s assigns for the term of the lease under clause (i). Facility services and common area maintenance shall not include

...
municipal services that the state or local government is required by law to provide to all landowners in its jurisdiction without direct charge, or firefighting or security-guard functions.

SEC. 718. ANNUAL REPORT TO CONGRESS ON DEPARTMENT OF DEFENSE REGIONAL CENTERS FOR SECURITY STUDIES.—(a) In General.—Section 2687 of title 10, United States Code, is amended—

(1) by striking subsections (a) and (b) and inserting the following:

"(a) Reimbursement of funds related to the execution of military family housing privatization projects.—"The Secretary of Defense may, during the first year of an initiative under this Subchapter, from appropriated funds available for the operation and maintenance of family housing to acquire funds available for the pay of military personnel in such amounts as are necessary to offset additional housing allowance costs incurred as a result of such initiative.",

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter IV of chapter 169 of title 10 is amended by inserting after the item relating to section 2685 the following:

"2686. Reimbursement of funds related to the execution of military family housing privatization projects.".

SEC. 719. ANALYTICAL REPORT TO CONGRESS ON DESIGN AND CONSTRUCTION.—(a) In General.—Section 2681 of title 10, United States Code is repealed.

(b) ClERICAL AMENDMENT.—The table of sections at the beginning of subchapter III of chapter 169 of such title 10 is amended by striking the item referring to section 2681.

TITLE VIII—DEPARTMENT OF DEFENSE ORGANIZATIONS AND POSITIONS

Subtitle A—Department of Defense Organizations and Positions

Sec. 801. Organizational Alignment Change for Director for Expeditionary Warfare.

Sec. 802. Consolidation of Authorities Relating to Department of Defense Regional Centers for Security Studies.

Sec. 803. Change of Name for Air Mobility Command.

Sec. 804. Transfer of Intelligence Positions in Support of the National Imagery and Mapping Agency.

Sec. 805. ORGANIZATIONAL ALIGNMENT CHANGE FOR DIRECTOR FOR EXPEDITIONARY WARFARE.—Section 538(a) of title 10, United States Code, is amended by striking "Office of the Deputy Chief of Naval Operations for Research, Warfare Requirements, and Assessments" and inserting "Office of the Deputy Chief of Naval Operations for Warfare Requirements and Programs".

SEC. 802. CONSOLIDATION OF AUTHORITIES RELATING TO DEPARTMENT OF DEFENSE REGIONAL CENTERS FOR SECURITY STUDIES.—(a) In General.—Chapter 6 of title 10, United States Code, is amended, by adding at the end the following new section: 816. Regional centers for security studies—"(a) Authority To Establish, Operate and Terminate Regional Centers.—The Secretary of Defense may establish, operate and terminate regional centers for security studies to perform for bilateral and multilateral communication and military and civilian exchanges. Such regional centers shall use professional military education, training, and related academic and other activities, as the Secretary deems appropriate, to pursue such communication and exchanges. The Secretary of Defense annually, in writing, shall evaluate the performance and value to the United States of each such regional center and determine whether to continue to operate such regional center.

(b) Acceptance of Gifts and Contributions.—"(1) In General.—The Secretary of Defense shall accept, hold, administer, and use gifts and contributions of money, personal property (including loans of property), and services for the purpose of carrying out the responsibilities of any one or more of the Regional Centers, and may pay all reasonable expenses in connection with the conveyance or transfer of such gifts and contributions of money and proceeds from the sale of property accepted by the Secretary under this subsection shall be credited to funds available for the operation and maintenance of the Regional Centers intended to benefit from such contribution and shall remain available until expended. No gift or contribution may be accepted under this subsection from a foreign state, or instrumentality or national thereof, or organization domiciled therein, nor anyone acting on behalf of any of them.

(c) Limitation.—The Secretary may not accept a gift or donation under subsection (b) if the acceptance of the gift or donation would compromise or appear to compromise—"(1) the ability of the Department of Defense, any employee of the Department or any other person to carry out the responsibility or duty of the Department in a fair and objective manner; or"(2) the integrity of any program of the Department of Defense or any person involved in such a program.

(d) Administration.—The Secretary may take the following actions in furtherance of the mission of the Regional Centers operated under this section: 1) Employment and Compensation of Faculty and Staff.—Notwithstanding the provisions of section 2611 of title 10, United States Code, regarding appointment, pay and classification, the Secretary may employ such civilian directors, faculty and staff members for Regional Centers operated under this section as the Secretary determines necessary.

(2) Waiver of Costs.—The Secretary may waive reimbursement of the cost of conferences, seminars, courses of instruction, and similar educational activities of such Regional Centers for foreign participants if the Secretary determines that attendance of such personnel with reimbursement is in the national security interests of the United States.

(3) Payment of Expenses.—In addition to waivers of reimbursement of costs described in paragraph (2), the Secretary of Defense may pay the travel, subsistence, and similar personal expenses of foreign participants in connection with the execution of such personnel at conferences, seminars, courses of instruction, or similar educational activities of such Regional Centers if the Secretary determines that payment of such expenses is in the national security interest of the United States.

(e) Report to Congress.—The Secretary shall report annually to the appropriate committees of Congress on the status, objectives, operations and foreign participation of the Regional Centers.

(f) Definitions.—In this section:

(1) The term ‘appropriate committees of Congress’ means the Committees on Armed Services of the Senate and of the House of Representatives.

(2) The term ‘Contributions’ means a contribution, gift or donation of funds, materials (including research materials), property or services (including lecture services and faculty services), but does not include a contribution made pursuant to chapter 138 of this title.

(b) Conforming Amendments.—(1) Section 1906 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–201; 110 Stat. 2653) is amended as follows:

(A) by striking subsections (a) and (b); and

(B) by redesigning subparagraph (c)(4) as subparagraph (c)(3); and

(c) by redesigning subsection (e).

(3) Section 1595 of title 10, United States Code, is amended, as follows—

(A) in subsection (c), by striking paragraphs (3) and (5);

(B) by redesigning subparagraph (c)(4) as subparagraph (c)(3); and

(c) by redesigning subsection (e).

(4) Section 2611 of title 10, United States Code, is repealed.

(c) Transfer of Intelligence Positions in Support of the National Imagery and Mapping Agency.—Section 1606 of title 10, United States Code, is amended by striking ‘517’ and inserting ‘541’.

Subtitle B—Reports

Sec. 811. Amendment to National Guard and Reserve Component Equipment: Annual Report to Congress.

Sec. 812. Elimination of Triennial Report on the Roles and Missions of the Armed Forces.

Sec. 813. Change in Due Date of Commercial Activities Report.

SEC. 811. AMENDMENT TO NATIONAL GUARD AND RESERVE COMPONENT EQUIPMENT: ANNUAL REPORT TO CONGRESS.—Section 1641 of title 10, United States Code, is amended to read as follows:

“(a) The Secretary of Defense shall submit to the Congress each year, not later than March 1, a written report concerning the equipment of the National Guard and the Reserve components of the armed forces, to include the U.S. Coast Guard. This report shall cover the current fiscal year and three succeeding years. The focus should be on major items of equipment which address large purchases (over $100 million), critical Reserve component shortages and major procurement items. Specific major items of equipment shall include ships, aircraft, combat vehicles and key combat support equipment.

(b) Each annual report under this section shall include the following:

(1) Major items of equipment required and on-hand in the inventories of each Reserve component.
“(2) Major items of equipment which are expected to be procured from commercial sources or transferred from the Active component to the Reserve components of each Service.

“(3) Major items of equipment in the inventories of each Reserve component which are substitutes for a required major item of equipment now in the inventory of the Reserve component.

“(4) A narrative explanation of the plan of the Secretary concerned to equip each Reserve component, including an explanation of the plans for equipage of the Reserve components that are short major items of equipment at the outset of war or a contingency operation.

“(5) A narrative discussing the current status of the compatibility and interoperability of equipment between the Reserve components and the active forces, the effect of that level of compatibility or interoperability on combat effectiveness, and a plan to achieve full equipment compatibility and interoperability.

“(6) A narrative discussing modernization shortfalls and maintenance backlogs within the Reserve components and the effect of those shortfalls on combat effectiveness.

“(7) A narrative discussing the overall age and condition of equipment currently in the inventory of each Reserve component.

“(c) Each report under this section shall be expressed in the same format and with the same level of detail as the information presented in the Future Years Defense Program Procurement Annex prepared by the Department of Defense.

SEC. 812. ELIMINATION OF TRIENNIAL REPORT ON THE ROLES AND MISSIONS OF THE ARMED FORCES.

(a) REPEAL OF REQUIREMENT FOR REPORT ON ASSIGNMENT OF ROLES AND MISSIONS.—Section 153 of title 10, United States Code, is amended—

(1) in subsection (a), by striking the catchline and section designator ““(a) PLANNING; ADVICE; POLICY FORMULATION.”; and

(2) by striking subsection (b).

(b) ROLES AND MISSIONS AS PART OF DEFENSE QUADRENNIAL REVIEW.—Subsection 118(e) of title 10 is amended by inserting after the first sentence the following two new sentences: "The Chairman shall also include his assessment of the assignment of functions (or roles and missions) to the Armed Forces and recommend to the Congress for change the Chairman considers necessary to achieve the maximum efficiency of the Armed Forces. This roles and missions assessment should consider the unnecessary duplication of effort among the armed forces and changes in technology that can be applied effectively to warfare."

SEC. 813. CHANGE IN DUE DATE OF COMMERCIAL ACTIVITIES REPORT.

Section 2461(g), title 10, United States Code is amended by striking “February 1” and inserting “June 1”.

Subtitle C—Other Matters

Sec. 821. Documents, Historical Artifacts, and Obsolete or Surplus Material: Loan, Donation, or Exchange.

Sec. 822. Charter Air Transportation of Members of the Armed Forces.

Sec. 821. DOCUMENTS, HISTORICAL ARTIFACTS, AND OBSOLETE OR SURPLUS MATERIAL: LOAN, DONATION, OR EXCHANGE.

(a) In General.—Section 2572 of title 10, United States Code, is amended—

(1) in subsection (a), by striking “subsection (c)” and inserting “subsection (c)(1)”; and

(2) in subsection (b), by striking “subsection (c)” and inserting “subsection (c)(2)”; and

(3) in subsection (c)—

(A) by striking “(c) This section” and inserting “(c)(1) Subsection (a)” and

(B) by adding at the end the following new paragraphs:

“(2) Subsection (b) applies to the following types of property held by a military department or the Coast Guard: books, manuscripts, paintings, drawings, plans, models, and obsolete or surplus material.

(b) CONFORMING AMENDMENT.—The heading of such section is amended by striking “concealed combat” and inserting “obsolete or surplus”.

SEC. 822. CHARTER AIR TRANSPORTATION OF MEMBERS OF THE ARMED FORCES.

Section 2640 of title 10, United States Code, is amended—

(1) in subsection (a)(1)(A), by striking “an” after “contract with” and inserting “a domestic or foreign”;

(2) in subsection (b)(5), by striking “checkrides” and inserting “cockpit safety observations”;

(3) in subsection (e), by striking “Military Air Lift Command and” inserting “Air Mobility Command”;

(4) in subsection (g), by striking “in an emergency” and inserting “in an emergency”;

(5) in subsection (j)(1), by striking “air carrier”.

TITLE IX—GENERAL PROVISIONS

Subtitle A—Matters Relating to Other Nations

Sec. 901. Test and Evaluation Initiatives.

Sec. 902. Cooperative Research and Development Projects: Allied Countries.

Sec. 903. Recognition of Assistance from Foreign Nationals.

Sec. 904. Personal Service Contracts in Foreign National Areas.

Sec. 901. TESTS AND EVALUATION INITIATIVES.

(a) AUTHORITY TO ENGAGE IN COOPERATIVE TESTS AND EVALUATION AT U.S. AND FOREIGN RANGES AND OTHER FACILITIES WHERE TESTING MAY BE CONDUCTED.—Chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

§ 23501. Agreements for the cooperative use of ranges and other facilities where testing may be conducted

“(a) AUTHORITY TO ENTER INTO INTERNATIONAL AGREEMENTS.—The Secretary of Defense and to the head of one designated agency of the Department of Defense, may enter into a memorandum of understanding (or other formal agreement) with an eligible country or international organization for the purpose of reciprocal use of ranges and other facilities where testing of defense equipment may be conducted.

“(b) GENERAL NATURE OF AGREEMENT.—Formal agreements reached under subsection (a) shall require reciprocal use of test ranges and other facilities where testing may be conducted and at such ranges and facilities operated by an eligible country or international organization.

“(c) PAYMENT OF COSTS.—Any agreement for the reciprocal use of ranges and other facilities where testing may be conducted shall contain the following pricing principles for reciprocal application:

“(1) The price charged a recipient country for test and evaluation services furnished by the officers, employees, or governmental agencies of the supplying country or international organization, shall be the direct costs to the supplying country or international organization that are incurred as a result of the test and evaluation services acquired by the recipient country or international organization.

“(2) The recipient country or international organization may be charged for indirect costs related to the use of the range or other facility where testing may be conducted only if the test and evaluation had not been undertaken by the supplying country or international organization.

“(3) RETENTION OF FUNDS COLLECTED FROM ELIGIBLE COUNTRIES AND INTERNATIONAL ORGANIZATIONS.—Amounts under section (c) from an eligible country or international organization shall be credited to the appropriation accounts under which such costs were incurred.

“(d) DEFINITIONS.—In this section:

“(1) Direct cost means any item of cost that is easily and readily identified to a specific unit of work or output. Indirect costs may include general and administrative expenses for the supporting base operations, manufacturing expenses, supervision, office supplies, utility, costs, etc. Such costs are accumulated in a cost pool and allocated to customers appropriately.

“(2) DELEGATION OF AUTHORITY.—The Secretary may delegate to the Deputy Secretary of Defense and to the head of one designated agency of the Department of Defense, the authority to determine the appropriateness of the amount of indirect costs included in such charges.

“(b) CEREMONIAL AMENDMENT.—The table of sections at the beginning of this chapter is amended by adding at the end the following new item:

“23501. Agreements for the cooperative use of ranges and other facilities where testing may be conducted.”

(c) AUTHORITY TO USE MAJOR RANGE AND TEST FACILITY INSTALLATIONS OF THE MILITARY DEPARTMENTS UNDER THE DEPARTMENT OF DEFENSE CONTRACT.—Section 2350a of title 10, United States Code, is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by adding at the end the following new paragraph:

“(2) Notwithstanding the requirement for reimbursement of all direct costs under subparagraph (1), a contractor, using a Major Range and Test Facility Base installation in support of a Department of Defense requirement, may be provided access to and use of the Major Range and Test Facility Base installation without charge and charged for services for purposes of the contract utilizing the same criteria as would be applied to use of a Major Range and Test Facility Base Installation by an eligible country or agency of the Department of Defense. A contractor of a Department or agency of the Federal Government other than the Department of Defense shall be provided access to and use of the Major Range and Test Facility Base Installation and services in support of such contract at the discretion of the Secretary of Defense, and may be charged for services obtained in the same basis as the Federal government Department or agency funding the contract.”

SEC. 801. COOPERATIVE RESEARCH AND DEVELOPMENT PROJECTS: ALLIED COUNTRIES.

Section 2350a of title 10, United States Code, is amended—

(1) in the title for Section 2350a—by striking out “allied” and inserting “NATO ally,”
Sec. 912. AUTHORITY FOR DESIGNATED CIVILIAN EMPLOYEES ABROAD TO ACT AS A NOTARY.

(a) CLARIFICATION OF STATUS OF CIVILIAN ATTORNEYS ACTING AS A NOTARY.—Section 1044a(b)(2) of title 10, United States Code, is amended by striking "legal assistance offices" and inserting "legal assistance attorneys".

(b) AUTHORITY FOR DESIGNATED CIVILIAN EMPLOYEES ABROAD TO ACT AS A NOTARY.—Subsection (b)(4) of such section 1044a is amended by inserting "and, when outside the United States, all civilian employees of the armed forces of suitable training," after "personnel status".

Sec. 913. INAPPLICABILITY OF REQUIREMENT FOR STUDIES AND REPORTS WHEN ALL DIRECTLY AFFECTED DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES ARE REASSIGNED TO COMPATIBLE FEDERAL POSITIONS.

Section 2601 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(1) INAPPLICABILITY.—Whenever all directly affected Department of Defense civilian employees are reassigned to comparable Federal positions—

(A) a major non-NATO ally, other friendly foreign country or NATO organization.

(B) a major non-NATO ally or other friendly foreign country or NATO organization.

"(a) AUTHORITY.—The Secretary of Defense may provide the Department of Defense, may prescribe, the Department of Defense to present to foreign nationals, tribunals, courts, other extraordinary coins, certificates, and other suitable commemorative items or mementos to recognize achievements or performance, not to exceed $50 for each memento.

"(b) CRYPTOGRAPHY.—Employees of the Department of Defense to present to foreign nationals, tribunals, courts, other extraordinary coins, certificates, and other suitable commemorative items or mementos to recognize achievements or performance, not to exceed $50 for each memento.

Sec. 914. PRESERVATION OF CIVIL SERVICE RIGHTS FOR EMPLOYEES OF THE FORMER DEFENSE MAPPING AGENCY.

Notwithstanding section 1612 of title 10, United States Code, the provisions of subsections (a) and (b) of section 915 are applicable to the former Defense Mapping Agency without a break in service to each of those former Defense Mapping Agency employees who occupied positions established under title 5, United States Code, and who on October 1, 1996, became employees of the National Imagery and Mapping Agency under section 923 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2675, et seq.) and for whom Subsection (b)(4) of such section 1044a is amended by striking "legal assistance offices" and inserting "legal assistance attorneys".

Sec. 915. FINANCIAL ASSISTANCE TO CERTAIN EMPLOYEES IN ACQUISITION OF CRITICAL SKILLS.

The Secretary of Defense may provide the Director, National Imagery and Mapping Agency, the authority to establish an undergraduate training program with respect to civilian employees of the National Imagery and Mapping Agency that is similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish for civilian employees of the National Security Agency under section 15 of the National Security Agency Act of 1959 (50 U.S.C. 402 note).

Sec. 916. PILOT PROGRAM FOR PAYMENT OF RETRAINING EXPENSES.

(a) AUTHORITY.—The Secretary of Defense may establish a pilot program for the payment of retraining expenses in accordance with the following:

"(1) AUTHORITY.—The Secretary of Defense may establish a pilot program for the payment of retraining expenses in accordance with the following:

"(A) AUTHORITY.—The Secretary of Defense may establish a pilot program for the payment of retraining expenses in accordance with the following:

Sec. 917. REMOVAL OF LIMITS ON THE USE OF VOLUNTARY EARLY RETIREMENT AUTHORITY AND VOLUNTARY SEPARATION INCENTIVE PAY FOR FISCAL YEARS 2001-2004.

Section 1153(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398, 114 Stat. 1641–325) is amended by striking "(1) in paragraph (1), by striking "(1) Subject to paragraph (2), the" and inserting "The";

"(2) by striking paragraph (2); and

"(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2)."
with this section to facilitate the reemployment of eligible employees of the Department of Defense who are being involuntarily separated due to a reduction-in-force or due to reorganization resulting from transfer of function, realignment, or change of duty station. Under the pilot program, the Secretary may pay retraining incentives to encourage non-Federal employers to hire and retain such employees.

(b) ELIGIBLE EMPLOYERS.—For purposes of this subsection, eligible employee is an employee of the Department of Defense, serving under an appointment without time limitation, who has been employed by the Department of Defense for a continuous period of at least 12 months and who has been given notice of separation pursuant to a reduction in force, except that such term does not include—

(1) a re-employed annuitant under subchapter III of chapter 83 of title 5, United States Code, chapter 84 of such title, or another retirement system for employees of the Government;

(2) an employee who, upon separation from Federal service, is eligible for an immediate reappointment under subchapter III of chapter 83 of title 5, United States Code, or subchapter II of chapter 84 of such title; or

(3) an employee who is eligible for disability retirement under any of the retirement systems referred to in paragraph (1).

(c) RETRAINING INCENTIVE.—(1) Under the pilot program, the Secretary may pay a retraining incentive to the non-Federal employer for an employee that is an employee of the Department of Defense, serving under an appointment without time limitation, who has been given notice of separation pursuant to a reduction in force, except that such term does not include—

(A) to employ an eligible employee referred to in subsection (a) for at least 12 months for a salary that is mutually agreeable to the employer and such person; and

(B) the Secretary, if the Secretary bears all costs incurred by the employer for any necessary training, as defined by the Secretary, provided to such eligible employee in connection with the employment by that employer.

(2) The Secretary may pay a retraining incentive to the non-Federal employer upon the employee’s completion of 12 months of continuous employment with that employer. Subject to this section, the Secretary shall prescribe the amount of the incentive.

(d) DURATION.—No incentive may be paid to the employer for any retraining incentive under the non-Federal employer for an employee referred to in subsection (a) for more than 12 months.

(e) DURATION.—No incentive may be paid under the pilot program for training commenced after September 30, 2005.

(f) DEFINITIONS.—The following definitions apply in this section:

(1) the term ‘‘non-Federal employer’’ means an employer that is not an Executive Agency, as defined in section 105 of title 5, United States Code, or the legislative or judicial branch of the Federal Government;

(2) ‘‘Reduction-in-force’’ and ‘‘transfer of function’’ shall have the same meaning as in chapter 84 of United States Code;

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of this chapter 141 is amended by adding at the end the following new item:

2410a. Pilot program for payment of retraining expenses.”.

Subtitle C—Other Matters

Sec. 921. Authority to Ensure Demilitarization of Significant Military Equipment Formerly Owned by the Department of Defense.

Sec. 922. Motor Vehicles: Documentary Requirements for Transportation for Military Personnel and Federal Employees on Change of Permanent Station.

Sec. 923. Department of Defense Gift Initiatives.


Sec. 925. Access to Sensitive Unclassified Information—Water Rights Conveyance Agreement.

Sec. 926. Water Rights Conveyance, Andersen Air Force Base, Guam.

Sec. 927. Repeal of Requirement For Separate Reserve For Procurement of Reserve Equipment.

Sec. 928. Repeal of Requirement for Two-Year Budget Cycle for the Department of Defense.

Sec. 929. Authority to Ensure Demilitarization of Significant Military Equipment Formerly Owned by the Department of Defense.


Sec. 932. Department of Defense Gift Initiatives.
(C) in paragraph (5), by striking “World War I or World War II” and inserting “a foreign war”;

(D) in paragraph (6), by striking “soldiers” and inserting “servicemen”; and

(E) in paragraph (8), by inserting “or memorial” after “a museum”; and

(2) in subsection (b), by inserting the following catchline after the subsection designation: “MAINTENANCE OF THE RECORDS OF THE GOVERNMENT.”;

(3) in subsection (c), by inserting the following designating the subsection designation: “SECRETARIAL AUTHORITY TO MAKE GIFTS OR LOANS.”;

(4) by adding at the end the following new subchapter—

“(d) AUTHORITY TO TRANSFER A PORTION OF A VESSEL.—The Secretary may lend, give or otherwise transfer any portion of the hull or superstructure of a vessel stricken from the Naval Vessel Register and designated for scrapping to a qualified organization listed under subsection (a). The terms and conditions of any agreement for the transfer of a portion of a vessel under this section shall include a requirement that the transferee shall maintain the material conveyed in a condition that will diminish the historical value of the material or bring discredit upon the Navy.”

(b) REASON.—(1) Section 2572(a)(1) of such title 10 is amended by adding at the end the following new provision:

“GIFTS OR LOANS.—’’;

and

“(2) Section 2572(b) of such title 10 is amended by adding at the end the following new provision:

“‘utility system’ as that term is defined in title 10, United States Code, is amended by adding at the end the following new section:

“SEC. 926. WATER RIGHTS CONVEYANCE, ANDERSEN AIR FORCE BASE, GUAM.

(a) AUTHORITY TO CONVEY.—In conjunction with the conveyance of a utility system under the authority of section 2888 of title 10, United States Code, and in accordance with all the requirements of that section, the Secretary of the Air Force may convey all, or any part of, to a qualified entity, the water rights and utility systems at Andersen Air Force Base, as determined by the Secretary. The conveyance of the water rights and utility systems at Andersen Air Force Base, as determined by the Secretary, may exercise the authority contained in subsection (a). The terms and conditions of any such conveyance that the conveyee of such water system may sell to public or private entities such water from Andy South and Andersen Water Supply Annex as the Secretary determines to be excess to the needs of the United States. The Secretary will negotiate a reasonable return to the United States of the value of such excess water sold by the conveyee, which return the Secretary may receive in the form of reduced charges for utility services provided by the conveyee.

(b) DEFINITIONS.—(1) For purposes of this section, “Andersen Air Force Base” means the Main Base and Northwest Field.

(2) The water rights referred to in subsection (a) shall be contained in a “utility system” as that term is defined in section 2688(g)(2) of title 10, United States Code.

(c) APPLICATION OF OTHER LAND DISPOSAL ACTS.—The water rights related to Andy South and Andersen Water Supply Annex shall not be considered as real property for purposes of section 2688 of title 10, United States Code, to amend the Organic Act of Guam, and for other purposes (Public Law 106-504; 114 Stat. 2309) and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, et seq.).

SEC. 927. REPEAL OF REQUIREMENT FOR SEPARATE BUDGET REQUEST FOR PROCUREMENT OF RESERVE EQUIPMENT.

Section 114(e) of title 10, United States Code, is repealed.

SEC. 928. REPEAL OF REQUIREMENT FOR TWO-YEAR BUDGET CYCLE FOR THE DEPARTMENT OF DEFENSE.


SECTIONAL ANALYSIS

Sections 101 through 106 provide procurement authorization for the Military Departments and for Defense-wide appropriations in amounts equal to the budget authority included in the President’s budget for fiscal year 2002.

Section 201 provides for the authorization of each of the research, development, test, and evaluation appropriations for the Military Departments and the Defense Agencies in amounts equal to the budget authority included in the President’s budget for fiscal year 2002.

Section 301 provides for authorization of the operational activities of the Military Departments and Defense-wide activities in amounts equal to the budget authority included in the President’s budget for fiscal year 2002.

Section 302 authorizes appropriations for the Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President’s budget for fiscal year 2002.

Section 303 authorizes appropriations for the Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President’s budget for fiscal year 2002.

Section 304 provides for authorization of the operational activities of the Military Departments and Defense-wide activities in amounts equal to the budget authority included in the President’s budget for fiscal year 2002.

Section 305 authorizes appropriations for the Working Capital Funds and the National Defense Sealift Fund in amounts equal to the budget authority included in the President’s budget for fiscal year 2002.
Section 304 would amend section 5(a) of the Multinational Force and Observers (MFO) Participation Resolution, to authorize the President to approve contracting out logistical services in support of the MFO that are currently performed by U.S. military personnel and equipment. The resolution was enacted in December 1981, in order to permit the United States to deploy peacekeepers and observers to Sinai, Egypt to assist in the fulfillment of the Camp David Accords. In this regard, it should be noted that section 5(b) gives the Secretary of Defense authority to establish a military support fund in connection with the Multinational Force and Observers (MFO) that is currently performed by the U.S. Logistical Support Unit.

Section 305 would authorize the Secretary of Defense or designee to enter into multiple-year operating contracts or leases or multiple-year charters of commercial craft, where economically feasible, in advance of the availability of funds in the working capital fund. The contract authority is available for obligation for one year and cannot exceed in its entirety $427,100,000. In subsequent years, the Department may submit requests for additional contract authority. This authority is appropriate for working capital funds where a history of use indicates an annual utilization of these items by DoD customers will be more than sufficient to pay for the annual costs. The use of annual leases, charters or contracts is not cost effective in obtaining capital items, or the use of commercial craft. Therefore, contract authority to enter into multiple-year leases and charters is needed. Additional annual appropriated funds, however, are not needed, since funds generated from these items to fill customer orders will cover these costs.

Section 301 of title 31, United States Code, discusses the application of appropriations and requires, in subsection (d), that to authorize making a contract for the payment of money in excess of an appropriation a new law must authorize that an appropriation in excess thereof is needed. As stated above, this proposal would not impact other programs.

Similar authority, successfully utilized by the Navy Industrial Fund in connection with the long term vessel charters of T-5 tankers, was approved by Congress as part of the Supplemental Appropriations Act of 1983. That program and the use of contract authority was favorably reviewed by the Comptroller General in B-174839, March 28, 1984. As indicated in the opinion, working capital funds are particularly suited for use for multiple-year contracts for capital items or associated services without posting obligations for the entire amount, even though no appropriations are likely to ever be needed.

The Military Sealift Command (MSC) provides worldwide capability for sealift, prepositioning, and a wide range of oceanographic services. They operate approximately 125 ships worldwide with civil mariners. Because the Military Sealift Command performs its multinational activity, their funding is provided through customer orders for sealift services, generally on an annual basis. Contract authority is required to enter into multiple-year leases in advance of appropriations. The legislative proposal provides that authority. It is anticipated that the U.S. Government will have MSC enter into multiple year leases for these charter and associated services for a number of reasons, including:

The 29 ships carry a variety of items, including ammunition, fuel, medical supplies, and heavy armored equipment. The offload and onload of this cargo requires significant logistics infrastructure and is a costly undertaking. The DoD infrastructure is sized for that operation to take place concurrent with the required maintenance schedule for the ships, which ranges from two to five years depending on the type of ship and type of cargo. The contract period is established to coincide with this schedule.

If the contracts were for annual leases, there could be significant operational degradation and excessive demand on the DoD infrastructure due to offload and onload activities. The Navy would be required to negotiate the contracts on an annual basis. If the legislation is not enacted, MSC will be required to negotiate the contracts on an annual basis, resulting in increased costs and potential disruptions to military operations.

The commercial market standard is for multiple-year leases or charters to be awarded to DoD by negotiating multiple year leases, consistent with commercial practices. In addition, DoD would not be able to effectively compete for annual contracts because foreign flag carriers are not interested in competing for short-term contracts due to the costs they incur to re-flag the vessels and to purchase the required commercial insurance. Past experience indicates that the costs to DoD would be significantly higher if competition were limited to currently U.S.-flag vessels on an annual basis.

Section 310. The Navy and the U.S. Environmental Protection Agency (EPA) entered into an agreement in January 2001 for the removal of over 1,000,000 cubic yards of oily sludge from the Hooper Sands Site, South Berwick, Maine for EPA's remaining past response costs incurred by the agency for the period from May 12, 1992 to December 31, 1992. The Navy did not pay for these past response costs, but are liable under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as generators who arranged for disposal of the hazardous substances that ended up at the site, and there are no other viable responsible parties. Under the agreement, the Navy would pay EPA's final response actions that were undertaken to protect human health and the environment at this site. This agreement also stipulated that the Navy would pay a portion of the cost as well as Congress in the FY02 legislative program for payment of costs previously incurred by EPA at the site. Should Congress approve this legislative proposal, the Navy would pay EPA with funds from the Navy's “Environmental Restoration Account, Navy” in an amount equal to the principle ($399,078.00) and interest ($106,378.00), or total of $505,456.00.

Section 311 would extend the authority to conduct the pilot program from September 30, 2001 to September 30, 2003. The original legislation authorized the DoD to contract authority to be used for emission trading programs that initially anticipated and more time is desired to allow the Coast Guard to develop an emission trading program similar to the benefits of economic incentive programs.

Section 351 also provides authority to the Department of Defense (DoD) to retain proceeds from the sale of Clean Air Act emission reduction credits, allowances, offsets, or comparable economic incentives. Federal fiscal law and regulations generally require proceeds from the sale of government property to be deposited in the U.S. Treasury. These authorities preclude an agency from keeping any proceeds generated by reducing air emissions and selling the credits as private industry. This inhibits the reinvestment of those funds to purchase air quality control equipment.

The Clean Air Act (CAA) mandates that states establish state implementation plans (SIPs) to attain and maintain the national ambient air quality standards (NAAQS), which are health based standards established for certain criteria air pollutants, e.g., ozone, particulate matter, carbon monoxide. To further this mandate, the 1990 Clean Air Act Amendments provided language encouraging the states to include “economic incentive” programs in their SIPs. Such programs encourage industry to reduce air pollution by offering monetary incentives for the reduction of emissions of criteria air pollutants.

A significant and growing number of state and local air quality districts have established various types of emission trading systems. Absent the proposed legislation, the DoD would be required to remit any proceeds from the sale of economic incentives to the U.S. Treasury. The proposed legislation grants military installations authority to retain the proceeds in order to create a local economic incentive to reduce air pollution above and beyond legal requirements. Retention and use of proceeds at the installation level is a key component of the pilot program.

Section 312 would remove the requirement for the Department of Defense to submit an annual report to Congress on its reimbursement of environmental response action costs for federal facilities that are transferred to the Department of Defense (DoD) after December 31, 2000, on the amount and status of any pending requests for such reimbursement by those same firms. This reporting requirement was slated to end in December 1999 pursuant to section 308(a) of the Federal Reports Elimination and Sunset Act of 1995, Pub. L. 104-66; however, it was reinstated by section 3101 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-55.

The Department strongly recommends removal of this statutory reporting requirement as it is unnecessary, or even helpful, for properly determining allowable environmental response action costs on Government contracts. More specifically, the Department could collect data on any other categories of contractor overhead costs.
This reporting requirement is very burden-
some on both the Department and contrac-
tors, diverting limited resources for data col-
lection efforts that do not benefit the pro-
curement process. Not only are the two dif-
ferent firms involved, but for most of these con-
tractors, data must be collected for mul-
tiple locations in order to get an accurate comp-
parison. In many cases the data must be derived from company records be-
cause it is not normally maintained in con-
tactor accounting systems. After the data is collected, contractors must review, assemble, and forward the data through their respective chains of command to the Defense Contract Audit Agency for validation. In addition, the data is pro-
vided to the Secretary of Defense’s staff for consolidation into the summary report pro-
duced to Congress.

In addition, the summary data provided to Congress in this annual report have shown that the Department is not expanding sufficiently the sums of money to reimburse contractors for such costs. The Department’s share of such costs in FY99 was approximately $11 million. In the preceding years the costs were, $13 million in FY98, $17 million for FY97, and $4 million for FY96.

Section 315 would amend section 2482(b)(1) of title 10, to extend its reach to all Defense working capital funds activities that involve the Defense Commissary Agency services, and allow them to recover those administra-
tive and handling costs the Defense Com-
missary Agency considers to be required to be paid for acquiring such services.

Currently, section 2482(b)(1) restricts the amount that the United States Transpor-
tation Command could charge to the Defense Commissary Agency for services to the price at which the service could be obtained through full and open competition, as section 41 U.S.C. 403(6) defines such terms. These same restrictions, how-

enact the proposed amendment would end this unwarranted restriction and pro-
vide a statistically valid and effective guideline for such charges to all De-

fense working capital fund activities. It should also be noted that the last sentence of the proposed amendment preserves the cur-
rent policy of insuring that costs associated with mobilization requirements, main-
enance of readiness, or establishment or maintenance of the infrastructure to support mobilization or readiness requirements, are not passed on to the customers of the De-

fense Commissary Agency.

This proposal will not increase the budg-
etary requirements of the Department of De-

fense.

Section 316 requires that the Defense Com-

m issary Agency surcharge account be reim-

bursed for the commissary’s share of the de-

preciated value of its stores when a Military Department or an organization with such au-

thority—previously acquired, constructed or im-

proved with commissary surcharge funds—to be used for non-commissary related pur-

poses.

This proposal will not increase the budg-
etary requirements of the Department of De-

fense.

Section 317 would permit the Defense Com-

m issary Agency (DECA) to sell limited ex-

change merchandise at locations where no exchange can be operated by the Defense Service Exchange. Under section 2486(b) of title 10, United States Code, the Secretary of Defense may authorize DECA to purchase and sell non-exchange items in a limited line of exchange merchandise. This amendment is required to obtain the nec-

essary authority for DECA to procure the ex-

change merchandise items from the Armed Service Exchange. The Armed Service Ex-

change selling price to DECA for such items is based on the retail exchange selling price at the re-
cost less the amount of the commissary sur-
charge, so that the amount paid by the pa-
cipating active units and organizations can-
not supply the items authorized to be sold by DeCA. DeCA may procure them from any au-

thorized source subject to the limitations of this section. Therefore, the benefits of such an arrangement would include:

- DeCA would no longer be limited to purchasing only those items for which it can

obtain a lower price than that charged by the Defense Service Exchange.

- The Defense Commissary Agency would no longer be limited to purchasing only

those items for which it can obtain a lower price than that charged by the Defense

Service Exchange.

- The proposed amendment continues the current practice of allowing the Defense

Commissary Agency to purchase items from any authorized source, as long as the

items are exempt from competitive procure-

ment if they comply with the brand

name sale requirements of title 10.

- The proposed amendment would also allow the contractor to carry out functions

for the commissary in the event that the Department is unable to provide them

from within (e.g., due to a contractor

expense increases with mobilization require-

ments, maintenance of the infrastructure to support

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percent starting in fiscal year 2002. This proposed amendment would not increase the total number of commissioned officers authorized for the Air Force and would not affect the current ratio.

The budgetary impact of this proposal on Air Force Military Personnel appropriation budget authority would be a net reduction of approximately $10 million in FY 2002, as the grade relief is phased in, and a net increase of approximately $29 million per year thereafter.

Section 501 would amend section 107(a)(d) of title 10, United States Code, which requires certain health care for Selected Reserve members of the Army assigned to units scheduled to be inactivated within 75 days of inactivation. Since this provision was enacted, the Department has implemented several programs to ensure Reserve component members are prepared for transition.

The Army has implemented a program called FEDS-HEAL, which is an alliance with the Department of Veterans Affairs (DVA) and the Department of Health and Human Services (DHHS) that allows Army Reserve and National Guard members to complete physical examinations, receive inoculations, and receive care, including mental health care, through a much larger provider network. The cost to the member to participate in this insurance program is only $7.63 per month with the Department paying the remaining 60 percent of the premium share.

The current statutory requirement to conduct a full physical examination every two years for members over the age of 40 and dental care identified during the annual dental screening is difficult to implement for a select population that is very fluid with a high turnover of individuals over the course of a year. Those Reserve Component units and individual Reserve Component members identified as early-deploying change frequently. The recently expanded TRICARE Dental Program provides Reserve component members with an affordable means of completing dental examinations and obtaining dental care through a much larger provider network. This oversight was specifically created to allow Reserve component members to undergo the many details incident to final departure from military life.

Section 503 would add a new section to title 10, United States Code, to provide for the promotion of an officer in a grade below lieutenant commander to officer-in-charge of the United States Navy Band. While so serving, an officer who holds a grade lower than captain (0–6) would have the grade of captain. The officer’s permanent status as a commissioned officer would not be changed by his detail under this section. Navy has one Limited Duty Officer captain (0–6) Bandmaster (4430) billet—the position of Officer in Charge/Leader, U.S. Navy Band, in Washington, D.C. As such, Navy estimated that this band position creates an inequity among members of the Selected Reserve and among Reserve Components.

This recommendation was contained in the Secretary of Defense report to Congress on the means of improving medical and dental care for Reserve Component members, which Secretary Cohen sent to Congress on November 5, 1999.

Section 502 would amend section 460 of title 10, United States Code, to allow members whose mandatory dates of separation or retirement are delayed due to medical deferment, a period of time to transition to civilian life following termination of medical deferment. It would also allow medical deferments for retirement onto an active duty for a period of not to exceed 30 days, following termination of suspensions for failure to meet grade under section 460, to transition to civilian life.

As currently written, section 460 requires immediate separation or retirement of those members who have been subject to mandatory separation or retirement under this title for age (section 420), length of service (sections 633-637), promotion (sections 632, 637) or selective early retirement (section 638). An abrupt termination, especially of a medical deferment, could cause undue hardship on those whose medical deferments were unexpectedly interrupted and now must be resumed post haste. Depending upon the nature and degree of the problems with employment opportunities should the member be thrust back into civilian life without a reasonable preparation for the required reentry forces, the Army would provide the individual sufficient time to transition to civilian life, without the distractions of the circumstances of their deferments. This leave would be paid for these members to transition to civilian life.

Army has created a standard dental examination form required for all Pilots. To track Reserve component members of the Army to meet medical and dental readiness requirements. DoD policy now requires an annual dental examination as part of the Reserve component member’s annual physical examination at the nearest DVA or DHHS healthcare facilities across the country. This significantly enhances Reserve component members of the Army to meet medical and dental readiness requirements. The cost to the member to participate in this insurance program is only $7.63 per month with the Department paying the remaining 60 percent of the premium share.

The current statutory requirement to conduct a full physical examination every two years for members over the age of 40 and dental care identified during the annual dental screening is difficult to implement for a select population that is very fluid with a high turnover of individuals over the course of a year. Those Reserve Component units and individual Reserve Component members identified as early-deploying change frequently. The recently expanded TRICARE Dental Program provides Reserve component members with an affordable means of completing dental examinations and obtaining dental care through a much larger provider network. The cost to the member to participate in this insurance program is only $7.63 per month with the Department paying the remaining 60 percent of the premium share.

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necessary to accomplish force-shaping reductions. In FY 1999 and 2000, the Air Force used early retirement, time in grade, commissioned service time waivers, and VSI/SSB to accomplish a new special selection board program to stabilize non-line-end-strengths. Future force-shaping initiatives could also require limited use of drawdown tools.

Section 506. Subsection (a) adds a new section 1558 at the end of chapter 79 of title 10: Selection boards. Section 1558 of the military department concerned to correct the military records of a person to reflect the favorable outcome of a special board, retroactive to the date of the original board.

Section 1558(b) provides that, in the case of a person who was separated, retired or transferred to an inactive status as a result of a recommendation of a selection board and later becomes entitled to retention on or restoration to active duty or active status as a result of action taken under section 1558(a), the person shall be restored to the same status, rights and entitlements in his or her armed force as he or she would have had had he or she been considered by the special board recommendation. If the member does not consent to such restoration, he or she will be entitled to appropriate back pay and allowances.

Section 1558(c) provides that a special board outcome unfavorable to the person considered confirms the action of the original board, retroactive to the date of the original board.

Section 1558(d) authorizes the Secretary concerned to prescribe regulations to implement section 1558(a). The circumstances under which special board consideration is available, when it is contingent on application by the person seeking consideration, and time limits for making such application. Such regulations, issued by the Secretary of a military department, must be approved by the Secretary of Defense.

Section 1558(e) provides that a person challenging the action or recommendation of a selection board is not entitled to judicial review of such action or recommendation of a selection board and that term is defined in section 1558(j).

Section 1558(f) provides that section 1558 does not limit the existing jurisdiction of any federal court to determine the validity of any statute, regulation or policy relating to selection boards, but limits relief in such cases to that provided by a prior selection board.

Section 1558(h) contains time limits for action by the Secretary concerned on a request for relief. If the Secretary, acting personally, may extend these time limits in appropriate cases, but may not delegate the authority to do so.

Section 1558(i) provides that section 1558 does not apply to the Coast Guard when it is not operating as a service in the Navy.

Section 1558(j)(1) defines ‘special board’ to encompass any board, other than a special selection board convened under section 628 or 14502 of title 10, convened by the Secretary concerned to consider a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component. If a court finds that the action of a special selection board was contrary to law or involved material error of fact or material administrative error, it shall remand to the Secretary concerned for any action that the Secretary would have taken had the error not been committed.

No other form of judicial relief is authorized. Subsection (i) provides that nothing in this legislation limits the existing jurisdiction of any court to determine the validity of any statute, regulation or policy relating to selection boards, but limits relief in such cases to that provided by a prior selection board.

Subsection (j) provides that nothing in this legislation limits the existence of the authority of the Secretary of a military department to correct a military record (one year after convening the board).

Subsection (k) provides that the amendment made by this legislation are retroactive in effect, except that they do not apply to any judicial decisions rendered in a federal court before the date of enactment.

Section 511 would allow the Service Secretaries to routinely transfer Reserve officers to the Retired Reserve—without requiring that the officer request such a transfer—for those officers who are required by statute to be removed from their reserve active status list because of failure of selection for promotion, length of service, or age. This section would add a similar respect for warrant officers and enlisted members who have reached the maximum age or years of service as prescribed by the Secretary concerned. This section would allow these members to request discharge or, in some cases, transfer to an inactive status list in lieu of transfer to the Retired Reserve. Giving the Service Secretaries this authority would also help protect those members who entered military service after September 7, 1980. Members who entered service after September 7, 1980, are discharged after qualifying for a non-regular retirement (former members) remain eligible to receive retired pay, but that pay is calculated on the pay scale in effect when discharged, rather than the pay scale in effect when they were retired.

This is significant since the retired pay for a former member in most cases will be significantly less than that of a member of the Retired Reserve because of the pay scale used to determine the amount of retired pay. This amendment would require the Secretary to make a positive election to be discharged with the full understanding of the possible economic consequences of that decision.

Section 512. A special selection board with respect to Reserve component members was added as section 991(b)(2) of title 10, United States Code, by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398). The purpose of this definition was to ensure consistent treatment of Active and Reserve component members serving under comparable circumstances and preclude Reserve component members from being credited with deployed days when they would spend off-duty time in the home.

As provided in the National Defense Authorization Act for Fiscal Year 2001, the Active component will count ‘home station training’ for deployment purposes whenever the member is unable to spend off-duty hours in the housing in which he or she resides when off duty, to include her permanent duty station or home. To maintain consistency between Active and Reserve component members, the definition of deployment for active reserve component members must be amended.

Absent the proposed change in Section 512, an active duty member who is not able to spend off-duty hours in the housing in which the member resides when on garrison duty at the member’s permanent duty station or
homeport, because the member is performing home station training, will be credited with a day of deployment, while a Reserve component member serving under comparable circumstances elsewhere that is not within the 100-mile or three-hour limit. Section 512 would ensure consistency between Active and Reserve component members with respect to the PERSTEMPO definition.

Section 513 would eliminate the periodic physical examination requirement for members of the Individual Ready Reserve (IRR), which is required once every five years. In lieu of conducting a physical examination every five years, these members would receive a physical examination upon active duty, if they have not had a physical examination within the previous five years. However, the Secretary concerned would have the authority to provide for a physical examination when necessary to meet military requirements. There is little return on investment for any program to conduct physical exams on the more than 450,000 members of the IRR. The annual cost of ensuring that IRR members are examined as to physical condition at least every five years is approximately $2.3 million. This cost reflects the necessity of ensuring that the Department is able to perform a physical examination for only 11,000 of the more than 90,000 required physical exams for IRR members each year. In this period of constrained resources, it would be far more cost-effective to conduct physical exams on these Reserve members at the time they are ordered to active duty. This recommendation was contained in the Secretary of Defense’s report to Congress on the means of improving medical and dental care for Reserve Component members, which was sent to Congress in February 2000.

Section 514 would amend titles 10, 14 and 38, United States Code (U.S.C.), to provide that the authority to sponsor reserve recruiters to compete with hospitals, nursing schools, and other entities entering the health care profession in order to entice them into joining the Reserve component members would be obligated for one year of service in the Selected Reserve. Currently, two years of service obligation is incurred for each partial year, regardless of the number of months in that partial year.

These amendments would provide a more robust incentive program that recruiters could offer students in the healthcare professions in order to entice them into joining the Reserve component. These amendments would allow subsequent financial assistance for officers who have completed medical or dental school and enter residence training in a critically short wartime skill designated by the Secretary of Defense as critical. When a student agrees to financial assistance for residency training, the two-for-one service obligation currently incurred for financial assistance for medical or dental school may be reduced to one year for each year, or part thereof, of financial assistance previously provided. However, the service obligation incurred for residency training would remain at two-for-one. Finally, Section 517 would authorize the service obligation incurred for financial assistance for a partial year to be incurred in six-month increments for those agreements that require a two-for-one payback. Thus, for every six months, or part thereof, of benefits provided to a student under this program, the service obligation incurred for each year, or part thereof, of financial assistance previously provided. However, the service obligation incurred for residency training would remain at two-for-one.
personnel performing full-time National Guard duty under title 32 of the United States Code. Therefore, Section 520 seeks to clarify the current law, aligning the current treatment of AGR personnel with the legislative authority governing them. This change is necessary because, effectively, there are few distinctions between the roles of AGR personnel and the roles of reservists performing full-time National Guard duty, outside of the different chains of command that each respective group must report to.

This section would amend section 12305(b) by inserting language that clearly would make reservists who are members of the National Guard serving on full-time National Guard duty under section 526(b)(2) of title 32 in connection with organizing, administering, recruiting, instructing, or training the reserve components. It would ensure that National Guard AGR personnel are treated in the same manner as AGR personnel of the other reserve components when determining the scope of permissible duties and functions that they may perform. Section 520 would clarify the authority of the Secretary of the Army to assign personnel to the National Guard to support an increasing number of operations and missions being assigned in whole or in part to the National Guard. Such duties include support activities, standby air defense operations, anticipated ballistic missile defense operations, land information warfare activities, and the use of AGR personnel to train both active component and reserve component personnel. Thus, this section is important because, while some of these duties have been performed by AGR personnel on full-time duty, there has been no explicit, binding, legal authority which would outline the limits governing their actions.

Section 521 would amend section 516 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261) to extend the time during which the Secretary of the Army may waive the applicability of section 12205(a) of title 10, United States Code, to reserve officers commissioned through the Army Officer Candidate School. Section 12205(a) provides that no person may be appointed to a grade above the grade of first lieutenant in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above the grade of lieutenant (junior grade) in the Naval Reserve, unless that person is recognized in a grade above the grade of lieutenant as a member of the Army National Guard or Air National Guard, unless that person has been awarded a baccalaureate degree by a qualifying educational institution.

Section 516 authorized the Secretary of the Army to waive the applicability of section 12205(a) and (b) where the enactment of Public Law 105-261 was commissioned through the Army Officer Candidate School. The waiver may continue in effect for no more than 2 years under the section may not be granted after September 30, 2000.

This section would amend section 516 to permit the Secretary to waive the applicability of section 12205(a) to any officer who was commissioned through the Army’s Officer Candidate School without the date of commissioning and would extend the Secretary’s authority under the section to September 30, 2003.

A master’s degree program would enhance the professional reputation and prestige of the Marine Corps War College now seeks similar authority. The uniqueness of the Marine Corps War College’s curriculum and program of study is unparalleled by other civilian universities or Federal Colleges. Most of the Marine graduates of the Marine Corps War College become faculty members of the Command and Staff College and the Command and Staff College already awarded a master’s degree, it would be very beneficial for these future faculty members to possess the required degrees when arriving at their new positions at the Command and Staff College.

A master’s degree program would enhance the professional reputation and prestige of the Marine Corps War College and to afford the Secretary of the Marine Corps War College would authorize the Command and Staff College to award a master’s degree upon completion of this program. This would facilitate the Marine Corps War College’s efforts to sustain and recruit a world class faculty which would serve to enhance the professional reputation and prestige of the Marine Corps War College and to afford the Secretary of the Marine Corps War College
Section 532. Section 206(d) of title 37, United States Code, states that “[t]his section does not authorize compensation for work or study by a member of a reserve component with correspondence courses of an armed force.” This is similar to the limitation in the definition of “inactive-duty training” found in 37 U.S.C. 101(22), which states that inactive-duty training does not include work or study in connection with a correspondence course of a uniformed service.

Since the correspondence course restrictions were enacted more than 50 years ago, technological advances affecting instructional methods have made these restrictions outdated. The law, as currently written, also contradicts recent Congressional directions to maximize the use of technologies such as the Internet, multimedia, and the National Guard’s Distributed Technology Training Project (DTTP).

The Secretary of Defense’s training technology vision is to “ensure that DoD personnel have access to the highest quality education and training that can be tailored to their needs and delivered cost effectively, anytime and anywhere.” The future learning environment created by the application of new technology will extend learning opportunities to Reserve members, active-duty service members, and students around the globe. This technology will be available at work (whether at a military base or in the civilian sector), at home, and at institutions provided for educational and military use at libraries and military classrooms.

Distributed Learning is defined as structured learning that takes place without requiring the physical presence of an instructor. Distributed learning is synchronous and/or asynchronous learning mediated with technology and may use one or more of the following media: microcomputers, videoconferencing, teleconferencing, correspondence courses, interactive television, and video conferencing. Advanced Distributed Learning is an evolution of distributed, or distance learning, that emphasizes collaboration on standards-based versions of reusable objects, networks, and learning management systems, yet may include some legacy methods and media.

The awarding of compensation and/or credit involving innovative learning technologies should be made in accordance with the completion of the required learning based on Service standards. It is the Service Secretary’s responsibility to establish what is “required.” This may require compensating for distance education courses, not including asynchronous learning, and providing mask/ or awarding credit to Reserve component personnel in this context. “Required” learning means education/training that is necessary for individual and/or unit readiness as called for by law, DoD policy, or Service regulation. Required distance/distributed learning and/or advanced distributed learning courses may have some paper-based phases or modules and can be compensated.

In addition, it is the Service Secretary’s responsibility to develop policies and procedures to ensure successful and accountable implementation of their Reserve component’s Distributed Learning programs. Such policies and procedures should include, but not be limited to, such topics as tracking members’ participation at a distance, measuring successful performance/participation, failure to report equipment funding and availability, equipment liability, personal liability, virtual training, virtual drilling, scheduling, documented accountability, and implementation guidance.

Section 532 would make no change in resource requirements because budgetary decisions are made at the component level. Such changes would appear in the budget issued for the fiscal year in question.
and events. In fact, sections 374, 6253 and 8747 of title 10, in conjunction with sections 374(a), 6257 and 8744(a) of such title, may be construed to prohibit the issuance of a duplicate medal.

If Section 522 is enacted, medal of honor recipients would have to make written application to the Secretary concerned for the issuance of a duplicate medal. Whether a medal is marked, as determined by the Secretary concerned, as a duplicate or for display purposes only, the issuance of a duplicate medal under this new authority would not constitute the award of ‘‘more than one’’ medal of honor to the same person. Sections 374(a), 6257 and 8744(a) of title 10 do not define ‘‘more than one’’ medal of honor to a person.

Issuance of a duplicate medal of honor for display purposes only, would allow recipients to replace their original medals in safekeeping or donate them to institutions for permanent display while retaining the duplicate to wear at events. Medal of honor recipients are expected to wear their medals at many of the events to which they are invited. According to the Congressional Medal of Honor Society, many medals are lost, stolen, or destroyed. Recipients wish to donate or otherwise safeguard their original medals because the value of the medals on the ‘‘black market’’ has made them an attractive target for theft.

Medals marked as duplicates, by contrast, would presumably have little or no ‘‘black market’’ value and would be less attractive targets for theft.

The issuance of a duplicate medal of honor would be minimal. The current cost of a medal of honor is approximately eighty-five dollars. If every living recipient requested a duplicate, the cost would not exceed $15,000, including shipping.

Section 543. Section 541 of the Floyd D. Spence National Defense Authorization Act for FY 2001 (114 Stat. 1654A–114) enacted section 1133 of title 10, United States Code (U.S.C.), that restricts eligibility for the Bronze Star Medal to members of the Armed Forces who are in receipt of special pay under section 310 of title 37, U.S.C., at the time of the events for which the decoration is to be awarded or who receive such pay as a result of those events. ‘‘Special pay’’ under section 310 includes both hostile fire pay (HFP) and imminent danger pay (IDP). The reason given was ‘‘to prevent the perception that someone whose duties never took them away from home did not perform the same kind of service as someone who was in the combat zone’’ and to better match their grade ranks that will better match their earnings profile comparison and information efforts and strong enforcement. The Secretary is to monitor and ensure quality control of the process to notify State driver’s license agencies, to enhance through the amendment of Article 111(2) of the Uniform Code of Military Justice, 10 U.S.C. §111(2), to reduce the enforceable BAC level to 0.08.

Reducing the BAC level to 0.08 would be consistent with statutes and administrative policies already in effect in 19 States, the District of Columbia, and Puerto Rico. Six additional States currently have under consideration legislation to lower the BAC level. If enacted, DoD believes the 0.08 BAC limit would be an important component of our overall traffic safety program and support efforts that could significantly reduce the annual number of alcohol-related fatal and non-fatal crashes involving DoD personnel, with corresponding human and economic savings.

Section 601. The primary purpose of military compensation is to provide a force structure that can support defense manpower requirements and policies to ensure that the uniformed services can recruit and retain a force of sufficient numbers and quality to support the military, strategic and political plans of the United States. Military compensation must be adequate. Comparison of the earnings of military members with their civilian counterparts suggests that, without some adjustment to both the level and structure of basic pay, the military will continue to face serious difficulties in both recruiting and retention.

The results of the military and civilian earnings profile comparison and the life-cycle earnings analysis conducted by the 9th Quadrennial Review of Military Compensation (QRCM) in 1999, and DoD Force Management Policy No. 106-64, indicates that the Bronze Star Medal has been awarded outside of combat areas, such as during the Korean conflict when it was approved for personnel stationed in Okinawa for meritorious service in connection with military operations against Northern Korea, therefore, limiting eligibility for the Bronze Star Medal to only those recipients whose immediate danger pay is authorized or those receiving hostile fire pay would include many deserving members of the Armed Forces.

Awarding of the Bronze Star Medal should be disassociated with any requirement for receiving IDP or HFP and should stand alone.

The revolution in military warfare has changed the way the U.S. has traditionally viewed force application and the decorations, especially those awarded for personal valor. In light of the new military ground combat operations, must also keep up and recognize the changes in the way the U.S. conducts warfare.

Section 551 would amend the Uniform Code of Military Justice to lower the blood alcohol concentration (BAC) necessary to establish drunken operation of a motor vehicle from 0.10 grams per liter of breath to 0.08 grams per liter of breath. This change would bring military practice in line with the recently revised national drinking standard that was found in section 351 of the Department of Transportation and Related Agencies Appropriations Acts for Fiscal Year 2001, Public Law 106–298, enacted section 294 of title 37, U.S.C., at the time of the events for which the decoration is to be awarded or who receive such pay as a result of those events.

Reducing the BAC level to 0.08 would be consistent with statutes and administrative policies already in effect in 19 States, the District of Columbia, and Puerto Rico. Six additional States currently have under consideration legislation to lower the BAC level. If enacted, DoD believes the 0.08 BAC limit would be an important component of our overall traffic safety program and support efforts that could significantly reduce the annual number of alcohol-related fatal and non-fatal crashes involving DoD personnel, with corresponding human and economic savings.

The GAO study cited by the Conference Report noted that a recent General Accounting Office report on Department of Defense to submit a report to the Armed Services Committees on ‘‘the Department’s efforts to reduce alcohol-related disciplinary infractions, traffic accidents, and other such incidents . . . and includes the Secretary’s recommendations for any appropriate changes.’’ The Conference Report noted that a recent General Accounting Office report on Department of Defense to submit a report to the Armed Services Committees on ‘‘the Department’s efforts to reduce alcohol-related disciplinary infractions, traffic accidents, and other such incidents . . . and includes the Secretary’s recommendations for any appropriate changes.’’ The Conference Report noted that a recent General Accounting Office report on Department of Defense to submit a report to the Armed Services Committees on ‘‘the Department’s efforts to reduce alcohol-related disciplinary infractions, traffic accidents, and other such incidents . . . and includes the Secretary’s recommendations for any appropriate changes.’’ The Conference Report noted that a recent General Accounting Office report on Department of Defense to submit a report to the Armed Services Committees on ‘‘the Department’s efforts to reduce alcohol-related disciplinary infractions, traffic accidents, and other such incidents . . . and includes the Secretary’s recommendations for any appropriate changes.’’

The GAO study cited by the Conference Report is entitled ‘‘Highway Safety: Effective-
comparably-educated civilian counterparts and provide a sufficient incentive for these members to complete a military career. Recommended adjustments: 

Targeted basic pay increases for enlisted members serving in the E-5 to E-7 grades with 6-20 years of service. This would alter the pay structure and thus the shape of the earnings profile for midgrade enlisted members to partially achieve the levels suggested by the 9th QRMC:

Raise basic pay for grades E-3 and E-9, to maintain incentives throughout the enlisted career and prevent pay inversion.

Provide a modest increase in basic pay for junior enlisted members. This increase reflects the importance of preventing further deterioration in the percentage of high quality recruits.

Provide for structural changes in selected pay cells for E3, E4, and E5 to motivate members to seek early promotion in the junior grades.

Raise basic pay for grades O-3 and O-4 to provide increased retention incentives.

Increase in pay for other officers to recognize their contribution to the defense effort.

Subsection (a) waives the adjustment in basic pay provided in section 1009 of title 37, United States Code. Subsection (b) provides a pay table describing the changes in basic pay. These increases are summarized in the table on the following page:

<table>
<thead>
<tr>
<th>Grade</th>
<th>Percentage increase</th>
<th>Grade</th>
<th>Percentage increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-1</td>
<td>6.0</td>
<td>W-1</td>
<td>15.0</td>
</tr>
<tr>
<td>E-2</td>
<td>6.0</td>
<td>W-2</td>
<td>15.0</td>
</tr>
<tr>
<td>E-3</td>
<td>6.0</td>
<td>W-3</td>
<td>15.0</td>
</tr>
<tr>
<td>E-4</td>
<td>5.6*</td>
<td>W-4</td>
<td>14.0</td>
</tr>
<tr>
<td>E-5</td>
<td>5.2*</td>
<td>W-5</td>
<td>13.0</td>
</tr>
<tr>
<td>E-6</td>
<td>5.0</td>
<td>W-6</td>
<td>12.0</td>
</tr>
<tr>
<td>O-1</td>
<td>5.0</td>
<td>W-7</td>
<td>11.0</td>
</tr>
<tr>
<td>O-2</td>
<td>4.8*</td>
<td>W-8</td>
<td>10.0</td>
</tr>
<tr>
<td>O-3</td>
<td>4.8*</td>
<td>W-9</td>
<td>10.0</td>
</tr>
<tr>
<td>O-4</td>
<td>4.6</td>
<td>W-10</td>
<td>9.0</td>
</tr>
<tr>
<td>E-5</td>
<td>4.0</td>
<td>W-21</td>
<td>8.0</td>
</tr>
<tr>
<td>E-6</td>
<td>3.8</td>
<td>W-22</td>
<td>7.0</td>
</tr>
<tr>
<td>E-7</td>
<td>3.6</td>
<td>W-23</td>
<td>6.0</td>
</tr>
<tr>
<td>E-8</td>
<td>3.4</td>
<td>W-24</td>
<td>5.0</td>
</tr>
<tr>
<td>E-9</td>
<td>3.2</td>
<td>W-25</td>
<td>4.0</td>
</tr>
<tr>
<td>O-3</td>
<td>3.0</td>
<td>W-26</td>
<td>3.0</td>
</tr>
</tbody>
</table>

*The following pay cells are increased by a different percentage for structural purposes:

- E-3 > 7.3
- E-4 > 7.5
- E-5 > 7.7
- E-6 > 7.9
- E-7 > 8.1
- E-8 > 8.3
- E-9 > 8.5
- E-10 > 8.7

Section 602 would amend section 407 of title 37, United States Code, to authorize payment of a partial dislocation allowance of $500 to members who are ordered, for the convenience of the Government (including privatization or renovation of housing), to move into or out of military family housing. Section 601 would allow members to receive a partial dislocation allowance for a government-directed move at the current permanent duty station.

Currently, a member directed to move due to privatization or renovation of government housing does so at the member’s personnel expense. In line with the current dislocation allowance authority, the member is making an unauthorized move; however, there is no authority to provide the member a dislocation allowance to set-up the new home. Section 601 would provide a partial dislocation allowance to help members defer moving expenses caused by the government’s housing decisions. Section 601 would limit payment in these circumstances to $500 initially. Adjustment formulas would be consistent with the full dislocation allowance. Section 601 also would specify that payments made under new subsection 407(c) shall not reduce any pay based on a fiscal year limitation like other DLA payments.

Section 603 would provide the Service Secretaries with the discretionary authority to pay the funeral honors duty allowance to military retirees who volunteer to perform honors at the funeral of a veteran. If authorized by the Secretary concerned, the retiree would receive this allowance without forfeiting any retired or retainer pay, disability compensation, or any other compensation from the Defense Fund. This recognizes that military retirees are a valuable personnel resource that can be employed to meet the funeral honors mission. By using retirees to perform this mission, it would allow active duty and reserve personnel to continue to train for and perform other vital military missions.

This minimal level of compensation could be used to encourage retirees to volunteer to perform this mission. Finally, by not requiring an active duty or retainer pay, or any other compensation, Section 602 not only would reduce the administrative burden placed on the Defense Finance and Accounting Service, but it also would provide an incentive to retirees who, in the vast majority of cases, would otherwise actually receive less compensation than that provided by their retired or retainer pay if they had to forfeit that pay in order to receive the funeral honors duty allowance.

Section 604 would authorize Reserve Component commissioned officers in the pay grade of O-1, O-2 or O-3 who are not on active duty for training, to receive a temporary duty allowance of $1460 (the equivalent of four years of active duty) as a warrant officer or enlisted member, to be paid at the O-1, O-2, or O-3 pay grade rate, assigned or serving as a warrant officer with at least four years of prior active duty service as a warrant officer or as an enlisted member is entitled to be paid at a slightly higher rate. This pay recognizes that in the additional experience these officers have gained while serving as a warrant officer or an enlisted member, is entitled to be paid at a slightly higher rate.

A Reserve commissioned officer who has accumulated at least 1,460 points—the equivalent of four years of active duty—has gathered experience similar to that of a member who qualifies for this increase in pay because of prior active duty service. Moreover, because of the part-time nature of their service, these officers have gained that experience over a longer period of time and are generally more mature. Allowing these officers to receive this increase in pay recognizes and rewards that experience on the same basis as officers who gained their experience purely through active duty service. Currently, the law prescribes that a member who elects to serve a tour of duty unaccompanied by his or her dependents, at a permanent station to which the movement of dependents is authorized, is not entitled to a Family Separation Allowance. The law provides, however, that the Secretary concerned may grant a waiver to that prohibition when excusable to deny the allowance to the member because of unusual family or operational circumstances. Under existing waiver authority, the Services approve waivers when a member chooses to serve an unaccompanied tour because travel of the individual’s dependents is not feasible due to medical reasons. This change would remove the statutory requirement for the Secretary concerned to issue a waiver in these circumstances.

Section 605 would modify section 427 of title 37, United States Code, to authorize the payment of a Family Separation Allowance to the member’s dependents as an unaccompanied—versus accompanied—tour because the member is denied travel of the member’s dependents due to certified medical reasons. Currently, the law prescribes that a member who elects to serve a tour of duty unaccompanied by his or her dependents, at a permanent station to which the movement of dependents is authorized, is not entitled to a Family Separation Allowance. The law provides, however, that the Secretary concerned may grant a waiver to that prohibition when excusable to deny the allowance to the member because of unusual family or operational circumstances. Under existing waiver authority, the Services approve waivers when a member chooses to serve an unaccompanied tour because travel of the individual’s dependents is not feasible due to medical reasons. This change would remove the statutory requirement for the Secretary concerned to issue a waiver in these circumstances.

Section 606 would amend section 477 of title 37, United States Code, to authorize a housing allowance for the chaplain for the Corps of Cadets at the United States Military Academy. The chaplain, who is a civilian employee of the Academy, would receive the same allowance for housing as is allowed to a lieutenant colonel. The chaplain would also receive fuel and light for quarters in kind.

Currently, section 437 reads as follows: “There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of five years. The chaplain is entitled to the same allowances for public quarters as are allowed to a captain, and to fuel and light for quarters in kind. This chaplain may be removed.”

Section 437, read literally, authorizes a quarters allowance for the chaplain at the Academy with fuel and light in kind, the Comptroller General has determined that this part of the section has been effectively repealed.

The source statute for section 437 was enacted in 1896 and codified as part of title 10 on 30 August 1956. The Comptroller General issued an opinion on August 28, 1959, which held that Congress intended the Classification Act of 1949 to supersede the source statute. Section 437 of the Classification Act was to ensure that Federal employees in like positions received equal pay. The Comptroller General concluded that the provisions relating to allowance for the academy chaplain were closely related to compensation and, therefore, the reenactment of the quarters provision as part of title 10 in 1956 was unnecessary. The Comptroller General also determined that the quarters allowance for the chaplain at the Academy, a position mandated by section 477, read literally, authorizes a quarters allowance for the chaplain at the Academy with fuel and light in kind, the Comptroller General has determined that this part of the section has been effectively repealed.

The cost to implement Section 605 is estimated at $14,000 per year, although a portion of that cost is offset by the cost of new quarters accommodated as rent paid by the academy chaplain.

Section 607 would amend section 1850(a) of title 10, United States Code, by removing the language relating to space-requested travel on military aircraft by Reserve component members when the purpose of that travel is to perform “annual training duty.” A statutory authority for Reserve component members to travel in a space-requested status when performing active duty for training (including annual training duty) is not necessary since these members are already authorized by DoD regulation to travel in a space-requested status. Of particular concern with the addition of annual training duty to section 1850 is the applicability of section 1850(b) to members performing such duty. Section 1850(b) prohibits a member from receiving travel, transportation and per mile allowances associated with space-requested travel to which the member was previously entitled before section 1850 was amended by section 308 of Public Law 103-358 (the National Defense Authorization Act for Fiscal Year 2001) to add “annual training duty.”

Since annual training is a requirement for satisfactory participation in the Selected...
Reserve, the Services budget for those training tours—this includes travel, transportation and per diem allowances. While section 12306 of title 10 allows Reserve component members to perform military duty and active duty for training without pay, it is not appropriate to use this authority in conjunction with annual training. If this act allows Nuclear Propulsion Officers to remain with annual training duty for Reserve component members who do not have an annual training requirement, the Department can address this issue.

If enacted, this proposal would have no cost or budgetary effect.

Section 612 would amend section 301c of title 37, United States Code, to remove submarine duty incentive pay (SUBPAY) rates from law, enabling the Secretary of the Navy to adjust these rates when changes to national security goals have increased to meet the manning requirements. The Department and the Congress have long recognized the cost-effectiveness of these incentives in supporting effective staffing in critical military skills. Section 613 would extend the authority to employ accession and retention incentives to support staffing for nurse and dentist billets which have been chronically undersubscribed. Experience shows that manning levels in these billets would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing a replacement. The Department and Congress have long recognized the cost-effectiveness of these incentives in supporting effective staffing in critical personnel levels within these fields.

Section 614 would extend the authority to employ accession and retention incentives. Experience shows that manning levels in these billets would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing a replacement. The Department and Congress have long recognized the cost-effectiveness of these incentives in supporting effective staffing in critical military skills. Section 614 would extend the authority to employ accession and retention incentives. Experience shows that manning levels in these billets would be unacceptably low without these incentives, which in turn would generate substantially greater costs associated with recruiting and developing a replacement. The Department and Congress have long recognized the cost-effectiveness of these incentives in supporting effective staffing in critical military skills.

Section 615 would extend the authorization for four years the Nuclear Incentive Pay Program, a two-year extension demonstrates support to career-oriented officers. Nuclear officer accessions and retention continue to require adequate incentives to safely sustain the post-drawdown force structure. Fiscal Year (FY) 1999 retention for submarine officers was 30 percent (required 29 percent), for SWO(N)s it was 20 percent (required 19 percent), and for SWO(N)s it was 20 percent (required 19 percent). FY 2000 retention for submarine officers was 26 percent (required 23 percent), and for SWO(N)s it was 20 percent (required 19 percent). Adequate for now, nominal retention rates must improve over this period to meet the manning requirements. Likewise, current accession productivity for these incentive goals were met for FY 2000 the first time meeting submarine officer accessions since FY 1991, FY 2001 nuclear officer accessions have increased to meet the manning requirements.

Inadequate accessions in previous years and continued production compound the sacrifices incurred by those officers remaining, as demanding and stressful sea tours are lengthened to meet safety and readiness requirements. All of these officers due to both effects is sufficiently severe, the entire sea/shore rotation plan becomes unbalanced, and officers eventually become unwilling to report to the next. This was the case in the 1960s and 1970s when many officers spent as many as 16 or more of their first 20 years in sea duty and nuclear or warfare-related training and supervisory assignments. Eventually, many of these remaining officers find the sacrifices too severe and resign from the Navy. Historically, there has shown retention erodes further, requiring even more accessions, and the vicious cycle repeats. The success of the Nuclear Incentive Pay Program is a direct result of quality personnel, rigorous selection and training, and high standards that ensure those of any other nuclear program in the world. Maintaining the mandatory code of safe and successful operations depends on attracting and retaining the right number and highest quality of officers in the Naval Nuclear Propulsion Program.

Representing nearly half the Navy’s major combatants and 60 percent of combat tonnage, submarine service is key to the result of expensive and lengthy Navy training. They also come predominantly from the very top of their classes at some of the nation’s best colleges and universities. As a result, these officers are highly sought for positions in career fields, both within and outside of the nuclear power industry, due to their educational background and management experience. The competition for well-qualified, experienced technical personnel coupled with the lowest unemployment rate in over two decades encourages veterans to leave. Retaining these officers is key to the continued safe operation of the nuclear-trained officers. The two-year extension would demonstrate Congressional commitment to retain today’s experienced officers and the incentives provided by the Selected Reserve affiliation and enlistment bonuses are a valuable part of the overall recruiting and retention efforts. Adequate manning with top quality individuals is key to the continued safe operation of the nuclear-trained officers. The two-year extension would demonstrate Congressional commitment to retain today’s experienced officers and the incentives provided by the Selected Reserve affiliation and enlistment bonuses are a valuable part of the overall recruiting and retention efforts. Adequate manning with top quality individuals is key to the continued safe operation of the nuclear-trained officers. The two-year extension would demonstrate Congressional commitment to retain today’s experienced officers and the incentives provided by the Selected Reserve affiliation and enlistment bonuses are a valuable part of the overall recruiting and retention efforts. Adequate manning with top quality individuals is key to the continued safe operation of the nuclear-trained officers. The two-year extension would demonstrate Congressional commitment to retain today’s experienced officers and the incentives provided by the Selected Reserve affiliation and enlistment bonuses are a valuable part of the overall recruiting and retention efforts. Adequate manning with top quality individuals is key to the continued safe operation of the nuclear-trained officers. The two-year extension would demonstrate Congressional commitment to retain today’s experienced officers and the incentives provided by the Selected Reserve affiliation and enlistment bonuses are a valuable part of the overall recruiting and retention efforts. Adequate manning with top quality individuals is key to the continued safe operation of the nuclear-trained officers.
$5,000 to $8,000, is necessary to ensure the Re-
serve components maintain the required manning levels by retaining members who are already serving in the Selected Reserve. Moreover, pay for enlisted person-
ers assigned to certain high priority units provides the Services with an incentive de-
signed to reduce manning shortfalls in critical unit manning.

The Reserve components have historically found it challenging to meet the required manning levels for professionals who possess a skill that is identified as critically short is essential if the Reserve components are to meet required manning levels in these skill areas.

The expanded role of the Reserve compo-
nents requires not only a robust Selected Re-
serve force, but also a robust enlisted manpower pools—the Individual Ready Reserve. Ex-
tending the Individual Ready Reserve bonus authority would allow the Reserve compo-
nents to target this bonus at individuals who possess skills that are under-subscribed, but are critical in the event of mobilization.

Combined, the Reserve component bonuses and pay would provide a robust array of in-
centives that are necessary if the Reserve components are to meet manning require-
ments. Authority for the Air Force to extend the Individual Ready Reserve bonus authority would allow the Reserve components to target this bonus at individuals who possess a skill that is critically short and which have no, or inade-
quately, statutory bonus authority for use to target the shortages) include the Air Force’s declining cumulative continuation rates among officers in communications-information systems (CIS) (35 percent in 1999), telecommunications engineers (39 percent in 1999 for de-
velopmental engineers, and 31 percent for civil engineers in 1999), scientific (53 percent in 1999), and acquisitions (averaged 38 percent across years) for all shortages in these skills are occurring while Air Force accession rates have also continued to fall below the Air Force goal. As of June 30, 2000, the Air Force accessed 74 percent of its goal for weather officers, 69 percent for develop-
mental engineers, 83 percent for air traffic control and combat operations, and 90 percent for comptrollers. Authority for the Air Force to offer a financial incentive to boost manning in the Engineering and Scientific career and CIS specialties is particularly critical.

Pursuant to experiences shortages in their Civil Engineer Corps (CEC) ca-
reer field. The Navy has failed to recruit the required number of CEC officers in the past three years, and although in Fiscal Year 2000, the Navy only accessed 54 per-
cent of the CEC accession goal; it projects to meet only 67 percent of the Fiscal Year 2001 CEC accession goal, and projects to remain short in the out-years. Shortages of that magnitude translate to undersupervision in areas such as water or oil (noxious fumes). Hazardous Duty Incentive Pay would provide a financial recognition to personnel participating in these operations for this un-
usually hazardous duty.

The net effect of adoption would be an in-
crease of $9.2 million for the Navy.

Section 621 would amend section 430 of title 37, United States Code; strike sub-
section (b)(4) authorizing payment of title 37, United States Code, to extend the a member's overseas duty

Section 623 would amend section 430 of title 37, United States Code; strike sub-
section (d) of section 1482 of title 10, United States Code; and repeal the Funeral Trans-

The three statutes cited above authorize allowances for family members and others to attend burial ceremonies of deceased members of the armed forces. The military services have the discretion to exempt a member from the provisions of the statutes if, for example, section 1482(d) prohibits the pay-
ment of per diem, while per diem may be
paid under the other two sections. The purpose of Section 622 is to establish uniform authority.

Section 411 of title 37 authorizes round trip transport and transportation allowances for “dependents of a member who dies while on active duty or inactive duty in order that such dependents may attend the funeral and transportation allowances to the cemetery for a person who is a surviving spouse, unmarried children under 21 years of age, unmarried children incapable of self-support, and unmarried children enrolled in school and under 23 years of age.” Section 411(c) provides that if no person qualifies as a surviving spouse or unmarried child, the parents of a member may be paid the travel and transportation allowances authorized under the section.

Section 1482(d) of title 10 applies when, as a result of the deaths belonging to the United States possessions and “may not exceed the rates for two days.” Section 1482(d) of title 10 applies when, as a result of the deaths of members of the armed forces, the Secretary of the military department has possession of commingled remains that cannot be identified. Under section 1482(d), the Secretary may pay the expenses of round trip transportation to the cemetery for a person who has been authorized under section 1482(c) to direct the disposition of the remains of the individual on behalf of the member whose remains are identified in a common grave in a national cemetery. Under section 1482(d), the Secretary may pay the expenses of round trip transportation to the cemetery for a person who has been authorized under section 1482(c) to direct the disposition of the remains of any other family member whose remains are selected by the person who directs disposition of the remains for individuals identified in a common grave in a national cemetery. Thus, the authority in section 411 would provide the basis for travel and transportation allowances available to those who were selected by the person who directs disposition of the remains for burial in a national cemetery.

Finally, Section 623 would provide the authority to provide uniform treatment among all family members for medical care, including in-service medical care, and would recognize their increased commitment to the Selected Reserve as a retention incentive for those who have not been able to use the benefit by the current 10-year limiting period. The Selected Reserve is required in order to use the MGIB–SR educational benefit, it would also provide a benefit to the Selected Reserve members who have not been able to use the benefit by the current 10-year limiting period.
Section 633. Section 2004 of title 10, United States Code, authorizes the Secretary of a Military Department to detail selected commissioned officers at accredited law schools for training in law and the degree of juris doctor or doctor of laws or juris doctor. No more than 25 officers from each Military Department may commence such training in any single year. Officers engaged in legal training are required to agree to serve on active duty following completion of the training for a period of two years for each year of legal training. This service is in addition to the service obligation incurred by the officer under any other provision of law or agreement.

Section 2603(b) requires a member of the Armed Forces who accepts a scholarship under section 2603 to serve on active duty for a period at least three times the length of the period of the education or training.

Section 2004 does not specifically authorize an officer attending law school under the Funded Education Program to accept a scholarship from the law school or other entity. Also, section 2603 does not indicate that the authority to accept a scholarship to obtain training under section 2603 can be used in conjunction with the authority in another section authorizing education or training, such as section 2004.

Moreover, if the authority in section 2004 for a funded legal education can be used in conjunction with the authority in section 2603 to obtain training or education through a scholarship, the service obligation is unclear. An officer who accepts a scholarship would reduce the expenditure of appropriated funds for the military department concerned. Ongoing training may also benefit an officer participating in the funded legal education program. For example, in an effort to minimize the costs associated with the funded legal education program, an officer must attend a law school in the officer’s state or other entity under section 2603, if the Army will pay in-state tuition rates or a law school that will grant in-state tuition rates to out-of-state students. This effectively prohibits officers from seeking admission into many of the most highly rated law schools in the United States. If an officer could accept a scholarship to cover all or part of the costs of attending a school of his or her choice, the officer may be unprepared to provide the necessary legal services to a service provider.

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The Department may waive the limitations if he makes a determination that it would be uneconomical, due to reasons such as cost or logistical constraints, to translate the requirements.

Section 705 would clarify the intent of amendments to section 1724 of title 10, United States Code, which were made by the Procurement Act of 1988 (10 U.S.C. 2307 note). The amendment permits the Secretary of Defense to establish new entry qualifications for contracting officers and civilian employees in GS-1102 positions. It also makes these requirements applicable to current employees and future entrants into the GS-1102 series, military and civilian personnel in similar occupational specialties.

Section 806 established strict minimum qualifications requirements for contracting officers and civilian employees in GS-1102 positions. It also made these requirements applicable to current employees and future entrants into the GS-1102 series, military and civilian personnel in similar occupational specialties. Section 806 also amended the exception provision in section 1724 of title 10, United States Code, to apply to the new minimum qualifications requirements.

This proposal would also provide the Secretary with flexibility to establish new or more developmental programs, which would educate people to meet the remaining requirements. It would also provide the Secretary the necessary tools to meet the need for contracting officers with authority above the GS-1102 level.

The proposed change would provide needed flexibility for small business concerns to receive a reasonable share of A&E contracts. DOD estimates that it would need to increase the threshold to over $1 million to accomplish this end. This would be so disproportionate to the $85,000 statutory threshold that it is more appropriate to seek a legislative change to this threshold.

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In the Committee report to the 1998 Defense Authorization Act, the House Armed Services Committee on National Security specifically directed the Secretary of the Air Force not to combine CACAOS functions with other services functions when considering multi-functional contracts until a thorough analysis is conducted. Such analysis would include an economic analysis that would assess the merits of these services to increase efficiencies at Air Force installations. The committee also directed the Secretary of the Air Force not to change the current operational arrangement (OGS, etc.) or to procure large supply combinations of supply and services functions in upcoming procurement, that would violate or circumvent the tenets of any current or future agreements. The Committee had similar language in its report on the 1997 Defense Authorization Act. The purpose of this legislation is to change the way military organizations are run, making it unnecessary to maintain supply infrastructure for the common commercial items.

Section 345(b)(6) states that “Ninety-five percent of the cost savings realized through the use of contractor-operated civil engineering functions in the defense of the actual cost of procuring supplies.” This statement is not longer accurate and seems to apply to Form 9 processing costs, not IMPACT costs.

Section 713. The National Defense Authorization Act for Fiscal Year 1996, included the Federal Acquisition Reform Act of 1996 (FARA) and the Information Technology Management Reform Act of 1996 (ITMRA). FARA and ITMRA were subsequently renamed the Clinger-Cohen Act of 1996. This proposal would modify Section 713 of the Clinger-Cohen Act to extend the test program for certain commercial items.

Section 2304(g) of title 10, United States Code, and 2535(g) and 427 of title 41, United States Code, permit the use of special simplified procedures for purchases of property specified minor construction projects greater than the simplified acquisition threshold (SAT). Section 4202 of the Clinger-Cohen Act, Application of Simplified Procedures to Certain Commercial Items, extended the authority to use special simplified procedures to purchases for amounts greater than the SAT but not greater than $5 million if the contractor has proposed actions based on the nature of the supplies or services, and on market research, that offers will include only commercial items. The purpose of this test program is to test contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administration costs for both Government and industry.

The test program was enacted into law on February 10, 1996. Final changes to the Federal Acquisition Regulation (FAR) and the Information Technology Management Reform Act of 1996 (ITMRA) were subsequently renamed the Clinger-Cohen Act of 1996. This proposal would modify Section 2304(g) of title 10, United States Code, and 2535(g) and 427 of title 41, United States Code, permit the use of special simplified procedures for purchases for property specified minor construction projects greater than the simplified acquisition threshold (SAT). Section 4202 of the Clinger-Cohen Act, Application of Simplified Procedures to Certain Commercial Items, extended the authority to use special simplified procedures to purchases for amounts greater than the SAT but not greater than $5 million if the contractor has proposed actions based on the nature of the supplies or services, and on market research, that offers will include only commercial items. The purpose of this test program is to test contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administration costs for both Government and industry.

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Section 802 amends section 5038(a) of title 10, United States Code, which requires that there be a Director for Expeditionary Warfare within the Office of the Deputy Chief of Naval Operations for Information, Warfare Requirements and Assessments.

A recent organizational alignment split the functions of the Deputy Chief of Naval Operations for Information, Warfare Requirements, Assessments and the Communications and Computer Warfare Requirements, Assessments, and Programs.

This proposal reflects that organizational change.

Section 802 amends chapter 6 of title 10, United States Code, by adding a new section 169 to consolidate the various existing legal authorities governing the DoD Regional Centers to ensure each of the Regional Centers can operate under the same set of authorities, which will ensure they can operate effectively.

The Department of Defense Regional Centers for Security Studies are an important national security initiative developed by Secretary Cohen and his predecessor, William Perry. These Centers, which serve as essential windows to the regional and multilateral communication and military and civilian exchanges, now exist for each major region—Europe, Asia, Africa and most recently for the Middle East.

The Regional Centers are very important tools for achieving U.S. foreign and security policy objectives, both for the Secretary of Defense and for the regional CINCS. The Centers allow the Secretary and the CINCS to reach out actively and comprehensively to other military establishments around the world to lower regional tensions, strengthen civil-military relations in developing nations and address critical regional challenges. The Department has had extremely good results with the Centers in each region. For example, more than twenty Marshall Center graduates are now ambassadors or defense attaches for their countries and another twenty serve as service chiefs or in other similarly influential positions.

Currently the five Regional Centers operate under a variety of legal authorities. As each new center was established, new legislation was passed to govern each center. As a result, no single center has the same set of legal authorities to operate. The patchwork of authorities hinders effective management and oversight of the Centers, and provides broad authority for some Centers but limited authority for other Centers.

A central component of the department’s proposal would be to consolidate the Regional Centers by repealing the diverse set of existing authorities concerning cost issues and instead providing a single legal provision concerning cost waivers for all of the Centers.

In addition to providing a single authority for the Centers to waive reimbursement of certain costs associated with the Centers by repeating the diverse set of existing authorities concerning cost issues and instead providing a single legal provision concerning cost waivers, the proposal also ensures that other existing authorities governing the Regional Centers apply to all of the Centers. By ensuring that all of the Centers can accept foreign and domestic gifts, hire faculty and staff, and invite participants from defense-related government agencies and non-governmental organizations, the proposal will improve the Centers’ ability to remain financially self-sustaining and the authority to accept gifts, all Centers will be able to cover a greater percentage of their operating costs using funds from outside the Department budget. Allowing both public and private foreign institutions to contribute to the Regional Centers’ operations will also enhance the involvement of those donor countries in the Centers and strengthen their commitment to the missions of the Centers. In terms of participation, the Centers in many cases are unique in their ability to bring together a diverse cross-section of the spectrum of the national security establishment in their respective countries. Broadening this pool to include participants from international governmental and legislative institutions will further strengthen the quality of discussion at the Centers and help establish additional important professional relationships among participants from the various regions.

Finally, enactment of section 802 would confirm the authority of the Secretary of Defense to manage all the Centers effectively. The combination of diverse legal authorities and unique organizational structures makes effective management and oversight of the Centers quite challenging. To address this management challenge, the Department created a Management Review Board last year (2008). The MRB is comprised of the Assistant Secretary of Defense (International Security Affairs) and the Director of the Joint Staff, or their designees, andinvite representatives from the Program Analysis and Evaluation, General Counsel, Joint Staff and the Services.

The DoD proposal to consolidate existing, legal authorities concerning cost issues and apply them to all of the Centers will further improve the ability of the MRB to ensure that the Regional Centers are thoroughly informed and engaged in the broader bilateral engagement strategy and funded appropriately.
This proposal provides no new spending authority. No additional resources are needed to implement these changes and as the existing departmental management structure matures, the expected outcome will be greater efficiencies in the management of the Regional Centers.

Section 811 would amend title 10, United States Code, by section 1623(b) of the Department of Defense Intelligence Personnel Policy Act of 1996 (Public Law 104–201; 110 Stat. 2745, 2747) to increase the number of Defense Intelligence Senior Executive Service (DISES) positions authorized for the Department of Defense Civilian Intelligence Personnel System (DCIPS) from 517 to 544. Enactment of the proposed amendment would enable the Secretary of Defense to allocate the 27 additional DISES positions to the National Imagery and Mapping Agency (NIMA), as the Director of Central Intelligence Intelligence Community (DCI) simulates a transformation of Senior Intelligence Service (SIS) positions from the Central Intelligence Agency (CIA).

Section 812 would repeal subsection 153(b) of the Military Airlift Command Act of 1958, as amended (10 U.S.C. 180c(b)), by Special Order 10–152 of the United States Army. This subsection had been added by Public Law 106–398; 114 Stat. 1654). In keeping with this congressional mandate, the Secretary of Defense is directed to prepare a joint working group to review the restrictive nature of the language. This report is written to expand the scope and remove the non-deployable substitute equipment. It would also expand the requirement for the full wartime requirement of non-deployable substitute equipment over successive 30-day periods and require for data that is no longer viable, only until April or May of each year. In past years, the report was a more meaningful and up-to-date report to be a more meaningful and up-to-date report to the Secretary of Defense with the President's budget submission. Under the Fair Act, the Department is required to submit an inventory of commercial functions each fiscal year. That inventory is subject to challenges by interested parties. In order to ensure that the Department of Defense Activities Inventory Reform Act (FAIR Act) submission. Under the FAIR Act, the Department is required to submit an inventory of commercial functions each fiscal year. That inventory is subject to challenges by interested parties. In order to ensure that the Department of Defense Activities Inventory Reform Act (FAIR Act) submission. Under the FAIR Act, the Department is required to submit an inventory of commercial functions each fiscal year. That inventory is subject to challenges by interested parties. In order to ensure that the Department of Defense Activities Inventory Reform Act (FAIR Act) submission. Under the FAIR Act, the Department is required to submit an inventory of commercial functions each fiscal year. That inventory is subject to challenges by interested parties. In order to ensure that the Department of Defense Activities Inventory Reform Act (FAIR Act) submission. Under the FAIR Act, the Department is required to submit an inventory of commercial functions each fiscal year. That inventory is subject to challenges by interested parties.
Section 262(b) authorizes the Secretary of a military department to exchange the items described in section 262(c) with any individual, organization, institution, agency, or nation if the exchange benefits the historical collection of the armed forces.

Section 262(c) would add the categories of property that may be exchanged by the Department of Defense to the items described in section 262(b). Currently, the military departments may exchange books, manuscripts, drawings, plans, models, works of art, historical artifacts, obsolete or condemned combat material for similar items. Property may also be exchanged for conservation supplies, equipment, facilities, salvage, and transportation services; restoration, conservation, and preservation systems; and educational programs. This proposal would expand the current authority to exchange "condemned or obsolete combat material" and authorize the military departments to exchange any "obsolete or surplus material" of a military department for "similar items" and for the enumerated services if the items or services will directly benefit the historical collection of the armed forces.

Section 262(d) would amend section 2640 of title 10, United States Code. This section requires the Department of Defense to meet safety standards established by the Secretary of Transportation under section 4701 of title 49, United States Code and requires air carriers to meet the Department of Defense requirements for performance of safety evaluation inspections of a representative number of their aircraft. This amendment would require the same safety standards to be applied to foreign air carriers as to the domestic air carriers in an effort to provide better protection to all of the armed forces.

Section 262(e) would require "check-rides" to be accomplished on carriers. As DOD personnel conducting the inspection are usually not qualified to test all the various types of aircraft they are required to inspect, the term "cockpit safety observations" more accurately describes the process involved.

Section 262(f) of the proposal would authorize the Department of Defense to delegate a representative to make determinations to leave unsafe aircraft. This change is a technical change to update the command name from "Military Airlift Command" to its successor "Air Mobility Command".

Section 262(g) of the proposal would authorize the Secretary of Defense to waive the requirements of this section in an emergency, based on the recommendation of the Commercial Airlift Review Board. As paragraph (1) would extend the inspection requirements to foreign air carriers, there may be instances that do not constitute an emergency but because of operational necessity a waiver may be appropriate. An example would be where there is only one carrier available in a foreign country but the host government will not allow an inspection on sovereignty principles. This proposal would be in line with the Commercial Airlift Review Board and would indicate a safe air carrier, a waiver may be appropriate.

Section 262(h) would amend subsection (j) of section 2640 title 10 United States Code that states certain terms listed therein have the same meanings as given by section 4012(a) of title 49 of the United States Code. "Air Carrier" is listed in subsection (j) and is defined in title 49 as a "citizen of the United States," "domestic," and "air transportation service" are defined in the same manner. This proposal would allow the Commander of the commercial airlift service to be applied equally to foreign and domestic carriers.

If enacted, this proposal will not increase the budgetary requirements of the Department of Defense.

Section 263 would amend title 10 by adding a new section 26301 to authorize the Secretary of Defense, with the concurrence of the Secretary of State, to enter into agreements, at reasonable cost, with foreign countries and international organizations, for the reciprocal use of ranges and other facilities where testing may be conducted. As military equipment becomes more complex, so does the need for more advanced, complex, and costly test and evaluation capabilities. In this environment, it is increasingly difficult and expensive to fulfill all of its legitimate research, development, test and evaluation (RDT&E) requirements at ranges and facilities under its control.

One way to achieve the next generation of U.S. weapons, and those of our friends and allies, is to take full advantage of capabilities available here and abroad. For example, the United Kingdom has a unique Artillery Recovery Range in Shoeburyness where we may recover rounds undamaged after firing for engineering evaluation. This uniqueness of the range comes from its geography. Shoeburyness lies on a gently sloping shore, allowing the target to be set before test fire, dominating in a large tidal basin from which undamaged spent rounds may be recovered with ease. No other facility in the world possesses this capability. Unfortunately, under current authority, it is often cost-prohibitive for the United States and the United Kingdom, for example, to reach an agreement to use each country to use the other's facilities to develop superior weapons to meet 21st Century challenges.

To obtain access to foreign ranges and facilities at reasonable rates, the Department needs new authority to provide eligible countries or international organizations reciprocal access, at reasonable rates, to U.S. facilities; and the enactment of this proposal would provide that new authority.

As the Secretary of Defense observed in a memorandum dated March 23, 1997: "International Armaments Cooperation is a key component of the Department of Defense strategy to ensure that we already do a good job of international cooperation at the technology end of the spectrum; we need to extend this track record of success across the remaining spectrum of the national defense. Reciprocal use of test and evaluation ranges and facilities is the next step in this process; and one that will expand long-standing international partnerships. The United States has enjoyed in the equipment acquisition process, and one that will expand long-standing international partnerships. The United States has enjoyed in the equipment acquisition process, and one that will expand long-standing international partnerships. The United States has enjoyed using international partnerships to achieve a number of Department of Defense initiatives to help offset the growing burden of RDT&E infrastructure support cost." See S. Rep. No. 104–17, at 17 (1995).

A noteworthy of note that the Congress has encouraged the Department to engage in such cooperative ventures by stating in the same report: "our allies are showing much greater interest in using U.S. test ranges and facilities because of encroachment problems overseas, and the Department should be more aggressive in encouraging and facilitating such requests." See S. Rep. No. 104–12, at 177 (1995).

Enactment of the authority granted in subsection (a) of this proposal would also encourage international weapon system and joint force levels; and interoperability is the cornerstone of Joint Vision 2020. It is axiomatic, that interoperability between U.S. and allied military forces enhances the effectiveness of the combined force to act in concert to deter or defeat aggression. Accordingly, continued success in regional conflicts depends on continued improvement of U.S. interoperability with our friends. This proposal would authorize the Department of Defense to enter into agreements with foreign countries that would permit the contractor to use these facilities.

If enacted, this proposal would not increase the budgetary requirements of the Department of Defense.
into cooperative research and development projects with other countries. This amendment would incorporate references to the term: “Major non-NATO ally” to allow countries such as South Korea among others to be recognized, not just as other friendly foreign countries, but as major allies.

Section 910 would amend section 53 of title 10, United States Code, to provide the Secretary of Defense the authority to recognize superior noncombat achievements or performances of friendly foreign forces and other foreign nations that significantly enhance or support the National Security Strategy of the United States. Currently, the Secretary of Defense’s authority to recognize superior achievements and performance by foreign nations is limited to awarding military decorations to military attaches of foreign nations for individual acts of heroism, extraordinary achievement or meritorious achievement, when such acts have been of significant benefit to the United States or materially contributed to the successful prosecution of a military campaign of the Armed Forces of the United States. See sections 1121, 3742, 3745, 3749, 6244–46, 8746, and 8749–50, of title 10, United States Code, and Executive Orders 11446 and 11448.

The Department of Defense provides a large portion of engagement programs conducted by the Department of Defense, in support of the National Security Strategy, however, do not involve diplomatic contacts, or heroic (ground) engagement and cooperation between U.S. servicemembers and foreign nations, in a variety of training, exercise, and peacetime operational settings. In these instances, many of these expenses that would be authorized by this proposal are currently being paid out of the pockets of soldiers, sailors, airmen, Marines, and members of the Coast Guard.

One of many examples of how this gap in legislative authority adversely impacts on American servicemembers is the experience of the United States Army Special Forces Command (Airborne). Since the first Special Forces unit was activated on June 19, 1952, Special Forces personnel have routinely deployed overseas to: train U.S. allies to defend themselves and counter the threat of dangerous insurgents, in so doing, Special Forces personnel often serve as teachers and ambassadors. As a result, the Special Forces Command is often called upon by regional combatant commanders, American Ambassadors, and DoD leaders to participate in a wide variety of peacetime engagement events, because of its global reach, regional focus, cultural awareness, language skills and military expertise.

During Fiscal Year 2000, the command had 2,102 personnel deployed on 81 missions in 51 countries. The activities conducted during these deployments included peace operations in the Balkans, humanitarian demining operations worldwide, deployments in support of the Department of State, Joint Contingency Operations, and the response Initiative, joint and combined exercise training, counterdrug operations, and mobile training team deployments. In addition, elements of the command host annual marksmanship and other international competitions involving military skills.

During this period of time members of the Special Forces Command participated in 328 deployments that required the purchase or production of plaques, trophies, coins, certificates of appreciation or commendation and other mementos for presentation to foreign nationals. These items were used to recognize achievements such as placing first, second or third in competitions, graduating from formal or informal courses, and other acts meriting recognition by U.S. officials. Since the authority to present military awards for valor, heroism or meritorious service as outlined above generally does not apply to such expenses, the men and women of the command have a long tradition of raising funds out of their own pockets, or from funds received from private organizations such as the Special Forces Association.

Assuming the expenditures for such items during the 328 deployments conducted by the Special Forces Command in fiscal year 2000 was four million dollars (the current “minimal value” threshold set by section 7342a(5) of title 5, United States Code), the men and women of that command would have contributed $1.6 million of their own funds, or obtained donations from private organizations such as the Special Forces Association, in order to carry out these missions.

Enactment of this proposal would enhance the execution of Department engagement programs, by providing another means of establishing goodwill today that will contribute to improved security relationships tomorrow. But most importantly, it would relieve servicemembers from the need to pay for their own awards or such mementos, if the Secretary of Defense authorizes commanding officers to pay for these expenses from the budgets allocated to them to conduct these missions.

Section 904 would give the Department of Defense (DoD) the personal service contract authority currently exercised by other agencies. This would allow the DoD to hire the in-country support personnel necessary to carry out its national security mission, particularly in the newly independent states.

In those countries where the DoD does not have a Status of Forces Agreement or does not have a major military presence including the Maldives, Peru, Kosovo, Sierra Leone, and the Horn of Africa, where the administration of local national employees, that service has traditionally been performed on a reimbursable basis by the Department of State (DOS). DOS has used its personal service contract authority to provide workers for DoD units such as Defense Attache Offices, Security Assistance Offices, and Military Liaison Teams, that are frequently co-located with the U.S. Embassy and may come under Chief of Mission authority. DoD does not have personal service contract authority and therefore, the particular A–76 study mentioned in section 2461 of title 10, United States Code, prohibits from using its personal service contract authority to provide workers for an agency that does not have such authority. If DoD were to make personal service contract service contracts that support DoD requirements, DoD units have been faced with the need to either use a non-personal service contract or obtain Full-Time Equivalent (FTE) authority. Use of non-personal service contracts may be inappropriate for the type of work involved, cause security and access issues at the Embassy, and be in violation of local labor law. FTE has not been readily available to support time-limited programs in an area where DoD is uniquely situated to assume these responsibilities.

Section 911 would amend section 1153 of the National Defense Authorization Act for Fiscal Year 2001 (NDAA) to limit the use of voluntary early retirement authority and voluntary separation incentive pay for fiscal years 2002 and 2003. Section 1153 of NDAA allows the Secretary of Defense to use Voluntary Separation Incentive Pay (VSP) and Voluntary Early Retirement Authority (VERA) for workforce restructuring for three years. Section 1153 of NDAA limits the use of VSP and VERA, but only be used in conjunction with reduction in force. Under this new authority, it is no longer necessary to abolish a position in order to grant early retirement or pay the incentive. The vacant position may be filled with an employee with skills critical to the mission and with the authority to shape the Defense workforce of the future.

Section 1153 authorized these programs to begin in 2001 and continue for three years. Assuming that the expenditures for such items during the 328 deployments conducted by the Special Forces Command in fiscal year 2000 was four million dollars (the current “minimal value” threshold set by section 7342a(5) of title 5, United States Code), the men and women of that command would have contributed $1.6 million of their own funds, or obtained donations from private organizations such as the Special Forces Association, in order to carry out these missions.

Section 902 would give DoD authority to hire personnel for personal service contracts in support of DoD for this purpose. Section 912 would amend section 1044a(b) of title 10 to expand a category of personal service contracts that DoD may use. Section 914(a)(4) would amend section 1044a(b) of title 10 to expand the definition of personal service contracts that DoD may use.

Section 915 would allow DoD to contract for personal service contracts in support of DoD for this purpose. Section 916 would amend section 1044a(b) of title 10 to expand the definition of personal service contracts that DoD may use.

Section 912(b) would amend section 1044a(b)(4) by adding a new paragraph (f)(1) that would expand the personal service contracts that DoD may use in support of DoD’s national security mission. Section 912(c) would amend section 1044a(b)(4) to expand the definition of personal service contracts that DoD may use in support of DoD’s national security mission.

Section 913 would amend section 2461 of title 10 concerning the conversion of commercial or industrial type functions to contractor performance. Federal agencies may convert commercial activities to contract or interservice support agreement without cost comparison under Office of Management and Budget Circular A–76. The affected Federal employees serving on permanent appointments are reassigned to comparable Federal positions for one year. This amendment would allow Federal employees serving in permanent positions to convert to temporary positions.

Section 914 would amend section 2461 of title 10 concerning the conversion of commercial or industrial type functions to contractor performance. Federal agencies may convert commercial activities to contract or interservice support agreement without cost comparison under Office of Management and Budget Circular A–76. The affected Federal employees serving on permanent appointments are reassigned to comparable Federal positions for one year. This amendment would allow Federal employees serving in permanent positions to convert to temporary positions.
Imagery and Mapping Agency. The section also permits the employees so affected to waive the provisions of this section. However, by doing so, the employee forfeits his or her right to any federal, state, or local pension or retirement benefit that would be assigned to him if he were entitled to it. This provision is consistent with the Department of Defense's authorities to provide pension benefits to employees in the case of layoffs or reorganizations. The purpose of this section is to provide needed clarification on several issues related to the demilitarization process, including the definition of "military equipment," the scope of the "sensitive but unclassified" (SBU) program, and the responsibilities of the Department of Defense in managing the disposal of military equipment.

Section 921 would amend the Department of Defense Authorization Act for Fiscal Year 1996 to authorize the Secretary of Defense to provide financial assistance to eligible recipients for the purpose of facilitating compliance with the provisions of section 5727 of title 5, United States Code, and to award grants to eligible recipients for the purpose of facilitating compliance with the provisions of section 5727 of title 5, United States Code. This section would also amend title 12, United States Code, to provide for the establishment of a task force to study the implementation of section 5727 of title 5, United States Code, and to make recommendations to Congress on the implementation of section 5727 of title 5, United States Code. This section would also amend title 19, United States Code, to provide for the establishment of a grant program to support the implementation of section 5727 of title 5, United States Code.

Section 922 would require the Secretary of the Navy to provide a report to Congress on the implementation of the provisions of section 5727 of title 5, United States Code, and to make recommendations to Congress on the implementation of section 5727 of title 5, United States Code. This section would also amend title 19, United States Code, to provide for the establishment of a grant program to support the implementation of section 5727 of title 5, United States Code. This section would also amend title 19, United States Code, to provide for the establishment of a grant program to support the implementation of section 5727 of title 5, United States Code.

Section 923 would amend the Department of Defense Authorization Act for Fiscal Year 1996 to authorize the Secretary of Defense to provide financial assistance to eligible recipients for the purpose of facilitating compliance with the provisions of section 5727 of title 5, United States Code, and to award grants to eligible recipients for the purpose of facilitating compliance with the provisions of section 5727 of title 5, United States Code. This section would also amend title 12, United States Code, to provide for the establishment of a task force to study the implementation of section 5727 of title 5, United States Code, and to make recommendations to Congress on the implementation of section 5727 of title 5, United States Code. This section would also amend title 19, United States Code, to provide for the establishment of a grant program to support the implementation of section 5727 of title 5, United States Code.

Section 924 would amend the Department of Defense Authorization Act for Fiscal Year 1996 to authorize the Secretary of the Navy to provide a report to Congress on the implementation of the provisions of section 5727 of title 5, United States Code, and to make recommendations to Congress on the implementation of section 5727 of title 5, United States Code. This section would also amend title 19, United States Code, to provide for the establishment of a grant program to support the implementation of section 5727 of title 5, United States Code. This section would also amend title 19, United States Code, to provide for the establishment of a grant program to support the implementation of section 5727 of title 5, United States Code.
a reason that a vessel cannot be donated in its entirety (e.g., removal of a reactor compartment), this new subsection would authorize the Secretary to donate any part of the remainder of the vessel to a qualified organization.

The Secretary of the Navy has existing authority under section 2572 of title 10, United States Code, to donate or transfer any vessel to the Coast Guard, the Smithsonian Institution, the National Park Service, or any other organization. This authority would be increased to include the transfer of a portion of a vessel. The transfer of a portion of a vessel would include a requirement that the transferee maintain the material in a condition that will not diminish the historical value of the material or bring discredit upon the Navy. Any donation authorized pursuant to this subsection remains subject to all applicable environmental laws and regulations. In accordance with section 7545(a), no expense would be incurred by the United States in carrying out this section.

The amendments to section 2572 of title 10 would clarify the eligibility requirements for political subdivisions of a state to receive condemned or obsolete combat material for static displays. The proposed legislation would authorize the Secretary to transfer any obsolete combat material pursuant to the Federal Property Act, but it would not define property as "obsolete." AMARC states that aircraft for display purposes cannot ordinarily be given to a state because of the nature of the material. Therefore, the bill currently written presents a substantial limitation on the Air Force's ability to provide aircraft and other historical material for static displays.

AMARC's role in donating or loaning military property for static displays is to be transitioned to the United States Air Force Museum. Clarifying section 2572(a)(1) to include counties and other political subdivisions of a state as permissible recipients of loans or transfer would expand AMARC's ability to foster good will and civic pride in the United States Air Force and its history through static displays.

The additional loans which do not count towards the limit of twenty-two vessels, which may be loaned to non-federal governments, would be used for static displays at county entities. The justification for these provisions is that it is cheaper for the Department to dispose of a vessel than to annually report to Congress. The Air Force desires to use these provisions as an incentive to pay for new water systems. The Air Force estimates that the new water systems will be more cost-effective than paying for new systems and that they will have a higher return on investment. The Air Force also believes that this provision will encourage states to build new water systems.

The Air Force estimates that the new water systems will be more cost-effective than paying for new systems and that they will have a higher return on investment. The Air Force also believes that this provision will encourage states to build new water systems.
This provision further will provide an opportunity to meet long term water needs with no USAF capital investment, reduce short range modernization/rehabilitation costs for the aged and reconfigured off-base water supply system (Tumon Maui well and Wells 1-3 were originally built to support off-base sites, for example the old Andy South), eliminate the need for a new well by Andy South, greatly enhance force protection needs for vital water resources, and increase system reliability and redundancy. Guam is chronically short of potable water supplies. The water from Andy South and Andersen Water Supply Annex, if available for commercial sale, would be of substantial value. The Air Force believes that value would be more than sufficient to pay the cost of installation of a new series of wells on Andersen AFB, either the Main Base or Northwest Field, and repair the existing system on the base.

Section 927 would repeal the requirement for a two-year budget cycle for the department of defense by repealing section 1405 of title 10, United States Code.

Section 928 would repeal the requirement for a two-year budget cycle for the department of defense by repealing section 1405 of the department of defense authorization act, 1986 (31 U.S.C. 1105 note).

By Mr. SMITH of Oregon:

S. 1156. A bill to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH of Oregon. Mr. President, today I introduce the Electric Bike Safety Act of 2001. This bill will encourage and provide more opportunities for Americans to enjoy the leisure and healthful benefits of riding bicycles. This legislation would amend the Consumer Product Safety Act CPSA, to provide that low-speed electric bicycles are consumer products subject to such Act. As the CPSA is now written, low-speed electric bicycles are not considered consumer products, but rather a motorized vehicle subject to all regulation by the National Transportation Safety Administration, NTSFA, which regulates automobiles and motorcycles.

As a result of low-speed electric bicycles being treated as motorcycles, they are required to meet burdensome and unnecessary standards, making low-speed electric bicycles much more costly than they need to be. Subjecting electric bicycles to motor vehicle requirements would mean the addition of a large, complex, and unnecessary cost, equipment, brake lights, turn signals, automotive grade headlights, and rearview mirrors.

Making electric bicycles accessible for more Americans will benefit the lives of thousands of Americans. Electric bicycles provide disabled riders the freedom of mobility without the cost or stigma of an electric wheelchair. Electric bicycles provide older riders with increased lifestyle flexibility due to increased mobility that electric bicycles allow them. Electric bicycles provide law enforcement officers a practical way to patrol neighborhoods and towns in a manner consistent with the highly successful emphasis on “Community Policing.” Electric bicycles provide short and medium distance commuters an environmentally friendly and healthy way to get to work. In short, this bill is pro-Americans with disabilities, pro-elderly, pro-safety, and pro-environment. The provisions will improve beneficial to many more Americans if we in Congress do our part to make electric bicycles affordable.

In my home State of Oregon, there are thousands of people who ride bicycles every day, whether as a means of transportation, exercise, or recreation. The City of Corvallis, OR, has 63 miles of bike lanes and paths and as a result has a very high number of people who commute to work on their bicycles. Area companies such as Hewlett-Packard and CH2M-Hill even offer changing areas and showers as a way to encourage their employees to ride bicycles to work. The Corvallis Police Department is also able to utilize electric bikes as a community friendly way to patrol the city.

I believe that placing electric bicycles under the regulation of the Consumer Product Safety Commission will be only ensure the safety of electric bicycles, but also promote their use by making electric bicycles an affordable alternative form of transportation to millions of Americans.

By Mr. SPECTER (for himself, Ms. LANDRIEU, Ms. COLLINS, Mr. SCHUMER, Ms. SNOWE, Mr. LEAHY, Mr. COCHRAN, Mr. BREAUX, Mr. ALLEN, Mr. BIDEN, Mr. BOND, Mrs. CARNANAH, Mr. CARPER, Mr. CHAFFEE, Mr. CLELAND, Mrs. CLINTON, Mr. DODD, Mr. EDWARDS, Mr. FRIST, Mr. GREGG, Mr. HELMS, Mr. HOLLINGS, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. LIEBMAN, Mrs. LINCOLN, Ms. MITHOFT, Mr. REED, Mr. ROCKEFELLER, Mr. RANBANES, Mr. SESSIONS, Mr. SHEELBY, Mr. SMITH of New Hampshire, Mr. THOMPSON, Mr. THURMOND, Mr. TORRICELLI, and Mr. WARNER):

S. 1157. A bill to reauthorize the consent of Congress to the Northeast Interstate Dairy Compact and to grant the consent of Congress to the Southern Dairy Compact, a Pacific Northwest Dairy Compact, and an Interstate Dairy Compact; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I join today with thirty-eight of my colleagues to introduce legislation authorizing interstate dairy compacts. Members of the U.S. House of Representatives have introduced similar legislation with 162 cosponsors, including 17 members of the Pennsylvania delegation.

This legislation will create a much needed safety net for dairy farmers in the Northeast and other regions and will bring greater stability to the prices paid to farmers. The bill authorizes an Interstate Compact Commission to take such steps as necessary to assure consumers of an adequate local supply of fresh fluid milk and to assure the continued viability of dairy farming within the compact region. Specifically, states that choose to join a compact should enter into a voluntary agreement to create a minimum farm-price for milk within the compact region to form a safety net for dairy farmers when farm milk prices fall below the full cost of production. This price would take into account the regional differences in the costs of production for milk, thereby providing dairy farmers with a fair and equitable price for their product.

Specifically, the bill would authorize Pennsylvania, New Jersey, Delaware, New York, Maryland, and Ohio to join the existing Northeast Interstate Dairy Compact, which has been in operation since July 1997. Most of these States have already agreed to join the Compact with strong support from their governors and legislatures. In the Commonwealth of Pennsylvania, Governor Ridge has been a very strong supporter and advocate of the Compact. The Pennsylvania Senate and House of Representatives have sent to Congress by voting with overwhelming majorities of 44 to 6 and 181 to 20, respectively, to authorize the Commonwealth’s participation in the Northeast Dairy Compact.

In addition to expanding the current Northeast Interstate Dairy Compact, the bill would authorize southern States to form a similar compact to provide price stability in their region. I am pleased to join so many of my colleagues from the South in introducing this legislation. Finally, the legislation would allow formation of other compacts in the Pacific Northwest and Intermountain region within three years. We have included language in this bill to encourage all States to take such steps as necessary to allow these States to support dairy compacts and to avoid their exclusion if these efforts lead to passage of compact legislation by their State governments.

In total, twenty-five States have already approved dairy compact legislation. This is a broad mandate from States that are attempting to meet the needs of dairy farmers, producers, consumers and other citizens concerned with the future of their milk supply. This bill would authorize States to form compacts to assure consumers of an adequate local supply of fresh fluid milk, to assure the continued viability of dairy farming, and to assure consumers of a fair and equitable price for their product.
SEC. 2. NORTHEAST INTERSTATE DAIRY COMPACT.

Section 147 of the Agricultural Market Transition Act is amended—

(1) in the matter preceding paragraph (1), by striking "States" and all that follows through "Vermon" and inserting "States of Alabama, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia,

(2) by striking paragraphs (1), (3), and (7); and

(3) in paragraph (2), by striking "Class III A" and inserting "Class IV";

(4) by striking paragraph (4) and inserting the following:

"(4) ADDITIONAL STATE.—Ohio is the only additional State that may join the Northeast Interstate Dairy Compact.

(5) in paragraph (5), by striking "the projected rate of increase" and all that follows through "Secretary" and inserting "the operation of the Compact price regulation during the fiscal year, as determined by the Secretary (in consultation with the Commission) using notice and comment procedures provided in section 533 of title 5, United States Code";

(6) by redesignating paragraphs (2), (4), (5), and (6) as paragraphs (1), (2), (3), and (4), respectively.

SEC. 3. SOUTHERN DAIRY COMPACT.

(a) IN GENERAL.—Congress consents to the Southern Dairy Compact entered into among the States of Alabama, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia, subject to the following conditions:

(1) LIMITATION ON PRICE REGULATION.—The Southern Dairy Compact Commission may not regulate Class II, Class III, or Class IV milk used for manufacturing purposes other than Class II or fluid milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Act of 1937 (referred to in this section as a "Federal milk marketing order") unless Congress has first consented to and approved such authority by a law enacted after the date of enactment of this joint resolution.

(2) ADDITIONAL STATES.—Florida, Nebraska, and Texas are additional States that may join the Southern Dairy Compact, individually or otherwise.

(3) COMPENSATION OF COMMODITY CREDIT CORPORATION.—Except as otherwise required by the context:

"(1) 'Class I milk' means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with..."
the principles expressed in subdivision (b) of section three.

"(2) ‘Commission’ means the Southern Dairy Compact Commission established by this compact.

"(3) ‘Commission marketing order’ means regulations adopted by the commission pursuant to sections nine and ten of this compact, in the form of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

"(4) ‘Compact’ means this interstate compact.

"(5) ‘Compact over-order price’ means a minimum price required to be paid to producers for Class I milk established by the commission in regulations adopted pursuant to sections nine and ten of this compact, which is above the price established in federal marketing orders or by state farm price regulations in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

"(6) ‘Compliance’ means the lactation secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.

"(7) ‘Partially regulated plant’ means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

"(8) ‘Participating state’ means a state which has become a party to this compact by the enactment of concurring legislation.

"(9) ‘Pool plant’ means any milk plant located in a regulated area.

"(10) ‘Region’ means the territorial limits of the states which are parties to this compact.

"(11) ‘Regulated area’ means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

"(12) ‘Regulation’ means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

"§ 3. Rules of construction

"(a) This compact shall not be construed to displace existing federal milk marketing orders, or regulation in the regulatory areas, but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.

"(b) The compact shall be construed liberally to achieve the purposes and intent enunciated in section one. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with federal order regulation and which have acquired commonly understood general meanings are not defined herein but the commission may further define the terms used for this purpose in the regulations and resolve any questions that will arise by the construction and development of the concepts and define additional terms as it may find appropriate to achieve its purposes.

“ARTICLE III. COMMISSION ESTABLISHED

§ 4. Commission established

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The commission shall be named the Southern Dairy Compact Commission. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in the appointing state. Delegation members appointed for three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission.

§ 5. Voting requirements

All actions taken by the commission, except for the establishment or termination of federal marketing orders or by state farm price regulations establishing a compact over-order price, and the adoption, amendment or rescission of the commission’s by-laws, shall be determined by the delegations present. Each state delegation shall be entitled to one vote in the conduct of the commission’s affairs. Establishment or termination of a federal marketing order or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area which covers a state shall require also the affirmative vote of that state’s delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the commission’s business.

§ 6. Administration and management

(a) The commission shall elect annually from among the members of the participating states delegations a chairperson, a vice-chairperson, and a treasurer. The commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the commission, and together with the treasurer, shall be bonded in an amount determined by the commission. The commission may constitute or direct its by-laws an executive committee composed of one member elected by each delegation.

(b) The commission shall adopt by-laws for the conduct of its business by a two-thirds vote, and shall have the power by the same vote to amend and rescind such by-laws. The commission shall publish its by-laws in the same manner as regulations and provide for proper notice to the delegations of all commission meetings, and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power to provide for the rights of the holders thereof as security therefor, subject to the provisions of section eighteen of this compact;

(e) To appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties and qualifications; and

(f) To create and abolish such offices, employ and discharge persons as necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The commission may also retain personal services on a contract basis.

§ 7. Rulemaking power

In addition to the power to promulgate a code of regulations and rules to prepare marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it may deem necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

“ARTICLE IV. POWERS OF THE COMMISSION

§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation

The commission is hereby empowered to:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, the commission, and to administer and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationship between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of the problems of the dairy industry.

(4) Prepare and release periodic reports on activities and results of the commission’s efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist in improving or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, handling, processing, distributing, selling and other services performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions affecting dairy farms.

(8) Equitable farm prices

(a) The powers granted in this section and section ten shall apply only to the establishment of a compact over-order price, so long as such order remains in effect in the region. In the event that any or all such orders are terminated, this article
shall authorize the commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) Any order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall exceed by not less than one dollar fifty cents per gallon the applicable federal order or state dairy regulation of the applicable class price established for milk from the region to reflect differences in competitive conditions as defined in an applicable federal market order or other state dairy regulation within the region. The commission may reimburse handlers of an adequate supply for fluid purposes.

(3) The commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services and in the event of reduced parity and Pan-American agencies for exchange of information or services and in the event of reduced parity and Pan-American Credit with the United States Child Nutrition Act of 1966. (11) Other provisions and requirements as the commission may find are necessary or desirable in order to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

§ 11. Rulemaking procedure

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under Article VII, Section 9(f), the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of a compact over-order price or a commission marketing order and thereafter before any amendment is made to the order, the commission shall hold a public hearing. The commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person or public interest group, such as producers, any organization of milk producers or handlers, general farm organizations, consumers or public interest groups, and local, state or federal officials.

§ 12. Findings and referendum

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553), the commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the provisions of the compact may be reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are acceptable to producers as provided in section thirteen.

§ 13. Producer referendum

(a) For the purpose of ascertaining whether the issuance of an amendment to a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection 9(f), is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed compact or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two-thirds of the voting producers who,
during a representative period determined by the commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment thereof.

"(c) For purposes of any referendum, the commission shall consider the approval or disapproval of a cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members thereof, in accordance with a contract with, such cooperative association of producers, except as provided in subdivisions (1) hereof and subject to the provisions of subsection (2) hereof.

"(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

"(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed by the commission.

"(3) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

"(4) If a cooperative association of producers has provided notice of its approval or disapproval of the proposed order, shall notify the commission as to the name of the cooperative of which he or she is a member, and the commission may summon such producer’s name from the list certified by such cooperative with its corporate vote.

"(5) In order to insure that all milk producers are informed regarding the proposed order, the commission shall notify all milk producers that an order is being considered and that each producer may register his approval or disapproval with the commission either directly or through his or her cooperative.

*14. Termination of over-order price or marketing order*

"(a) The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price constructs or does not tend to effectuate the declared policy of this compact.

"(b) The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the members of a representative body of all regulated persons as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed by the commission.

"(1) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this article and shall require no hearing, but shall be subject to the requirements for informal rulemaking prescribed by section four of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

"ARTICLE VI. ENFORCEMENT

"15. Records; reports; access to premises

"(a) The commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission is authorized to examine the books and records of any person holding title to or having control over the premises and records of all regulated persons.

"(b) Information furnishing to or acquired by the commission, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section and empowers itself to be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information and furnish it in confidence; or (ii) the publication by direction of the commission of the name of any person violating any regulations of the commission, together with a statement of any particular provisions violated by such person.

"(c) No officer, employee, or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall be subject to a fine of not more than one thousand dollars or to imprisonment for not more than one year, or to both, and shall be removable from office.

*16. Subpoena; hearings and judicial review*

"(a) The commission is hereby authorized to issue subpoenas to render services for or advancing the interests of any person who, or whose property, is in its opinion, subject to the regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition, in accordance with regulations made by the commission.

"(b) Any handler subject to an order may file a written petition with the commission, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law or practice or a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

"(c) The district courts of the United States in any district in which such handler is an inhabitant, or has its principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within thirty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the complaint. If the court determines that such ruling is not adequate in law or practice or that modification thereof or to be exempted therefrom is not in accordance with the regulations made by the commission, it shall be final, if in accordance with law.

"(d) The court, in determining whether the ruling of the commission is in accordance with law, shall be governed by the regulations made by the commission in their interpretation of the law. If the court determines that such ruling is not in accordance with law, or that the regulations made by the commission are inadequate to effectuate the declared policy of this compact, it shall be final, if in accordance with law.

*17. Enforcement with respect to handlers*

"(a) Any violation by a handler of the provisions of regulations establishing an over-order price or a compact marketing order, or other regulations adopted pursuant to this compact shall:

"(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, before any court of state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

"(b) Any person who obstructs or fails to provide access to the premises of any such order or any obligation imposed in connection therewith is not in accordance with law, or (2) to delay the commission from obtaining relief pursuant to this section, shall abate whenever a final decision has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

*18. Finance of start-up and regular costs*

"(a) To provide for its start-up costs, the commission may borrow money pursuant to its power under subdivision (d), paragraph four. In order to finance the costs of administration and enforcement of this compact, including the payment of start-up expenses, the commission may, by a majority vote, adopt and implement a plan to levy a surcharge upon each handler who purchases milk from producers within the region, if imposed, this assessment shall be collected on a monthly basis for up to one year from the date the commission convenes, in an amount not to exceed $.015 per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of funding such regulations, and no participating state or the United States shall be liable therefor.
§ 19. Audit and accounts

(a) The commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

(b) The accounts of the commission shall be open at any reasonable time for inspection by a participating state or by any person authorized by the commission.

(c) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL

§ 20. Entry into force; additional members

The compact shall enter into force effective when enacted into law by any three of the states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia and when the consent of Congress has been obtained.

§ 21. Withdrawal from compact

Any participating state may withdraw from this compact by enacting a statute repealing in whole or in part such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the commission and the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a participating state prior to the time of such withdrawal.

§ 22. Severability

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact and no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the commission and the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a participating state prior to the time of such withdrawal.

§ 23. Compensations of Commodities Credit Corporation

In the event that Congress consents to a Pacific Northwest Dairy Compact proposed for the States of Washington, Oregon, Idaho, Montana, and Oregon, subject to the following conditions:

(a) Text.—The text of the Intermountain Dairy Compact shall be identical to the text of the Southern Dairy Compact, as follows:

A. In section 1, the reference to “southwestern states” shall be changed to “Intermountain states”.

B. In section 9(b), the reference to “Salt Lake City” shall be changed to “Salt Lake City, Utah”.

C. In section 20, the reference to “any three” and all that follows shall be changed to “Colorado, Nevada, and Utah.”.

D. LIMITATION OF MANUFACTURING PRICE REGULATION.—The Commodity Credit Corporation shall not prescribe a price for manufacturing purposes or any other milk, other than Class I, fluid milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 668c), reenacted with amendments by the Agricultural Marketing Act of 1937 (referred to in this section as a “Federal milk marketing order”).

E. EFFECTIVE DATE.—Congressional consent under this section shall take effect on the date (not later than 3 years after the date of enactment of this Act) on which the Pacific Northwest Dairy Compact is entered into by the second of the second of the participating states specified in the matter preceding paragraph (1).

F. COMPENSATION OF COMMODITY CREDIT CORPORATION.—For the period under the Pacific Northwest Dairy Compact, the Commodity Credit Corporation shall perform such functions as shall be necessary to ensure that the Federal milk marketing order shall provide technical assistance to the commission and be compensated for such assistance.

G. SEC. 5. INTERMOUNTAIN DAIRY COMPACT.

Congress consents to an Intermountain Dairy Compact proposed for the States of Colorado, Idaho, Montana, and Oregon, subject to the following conditions:

(a) Text.—The text of the Intermountain Dairy Compact shall be identical to the text of the Southern Dairy Compact, except as follows:

A. In section 1, the reference to “southern states” shall be changed to “Intermountain states” and “Intermountain region”, respectively.

B. In section 9(b), the reference to “Salt Lake City” shall be changed to “Salt Lake City, Utah”.

C. In section 20, the reference to “any three” and all that follows shall be changed to “Colorado, Idaho, and Montana”.

D. LIMITATION OF MANUFACTURING PRICE REGULATION.—The Commodity Credit Corporation shall not prescribe a price for manufacturing purposes or any other milk, other than Class I, fluid milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 668c), reenacted with amendments by the Agricultural Marketing Act of 1937 (referred to in this section as a “Federal milk marketing order”).

E. EFFECTIVE DATE.—Congressional consent under this section shall take effect on the date (not later than 3 years after the date of enactment of this Act) on which the Intermountain Dairy Compact is entered into by the second of the participating states specified in the matter preceding paragraph (1).

F. COMPENSATION OF COMMODITY CREDIT CORPORATION.—For the period under the Intermountain Dairy Compact, the Commodity Credit Corporation shall perform such functions as shall be necessary to ensure that the Federal milk marketing order shall provide technical assistance to the commission and be compensated for such assistance.

G. SEC. 6. PACIFIC NORTHWEST DAIRY COMPACT.

Congress consents to a Pacific Northwest Dairy Compact proposed for the States of California, Oregon, and Washington, subject to the following conditions:

(a) Text.—The text of the Pacific Northwest Dairy Compact shall be identical to the text of the Southern Dairy Compact, except as follows:

A. In section 1, the reference to “southwestern states” shall be changed to “Pacific Northwest states”.

B. In section 9(b), the reference to “Salt Lake City” shall be changed to “Seattle, Washington”.

C. In section 20, the reference to “any three” and all that follows shall be changed to “California, Oregon, and Washington”.

D. LIMITATION OF MANUFACTURING PRICE REGULATION.—The Dairy Compact Commission established to administer the Pacific Northwest Dairy Compact (referred to in this section as the “Commission”) may not regulate Class I, Class II, Class III, or Class IV milk used for manufacturing purposes or any other milk, other than Class I, fluid milk, as defined by a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 668c), reenacted with amendments by the Agricultural Marketing Act of 1937 (referred to in this section as a “Federal milk marketing order”).

E. EFFECTIVE DATE.—Congressional consent under this section shall take effect on the date (not later than 3 years after the date of enactment of this Act) on which the Pacific Northwest Dairy Compact is entered into by the second of the participating states specified in the matter preceding paragraph (1).

F. COMPENSATION OF COMMODITY CREDIT CORPORATION.—For the period under the Pacific Northwest Dairy Compact, the Commodity Credit Corporation shall perform such functions as shall be necessary to ensure that the Federal milk marketing order shall provide technical assistance to the commission and be compensated for such assistance.

G. SEC. 7. CONGRESSIONAL RECORD — SENATE

June 29, 2001

There are those in Congress who have opposed dairy compacts since the day the idea was introduced. However, dairy compacts are not antitrust, do not increase milk production and milk from outside the compact region is not excluded from sale in the compact region. Over the past few years, New England's dairy farmers have put into practice the compact's promise of providing stable prices for farmers and
consumers, strengthening rural communities and preserving our environment. It is time to allow the States the opportunity to provide their farmers the stability they so desperately need.

Ms. COLLINS. Mr. President, I rise with my colleagues today to introduce the Dairy Consumers and Producers Protection Act. Our legislation reauthorizes the Northeast Interstate Dairy Compact and allows other regions of the country to form compacts. In doing so, our bill extends to additional consumers and producers the benefits we enjoy in the Northeast.

The Northeast Dairy Compact has proven successful in balancing the interests of processors, retailers, consumers and dairy farmers by maintaining milk price stability. Last year, 458 dairy farmers in Maine received payments under the compact totaling $4.8 million. The payments averaged approximately $32 per pound to help farmers maintain viable operations, sustain rural communities, and ensure a reliable supply of wholesome dairy products for consumers.

The Northeast Dairy Compact is an innovative approach to promoting stability in the New England dairy industry. The Compact provides for a commission, comprised of delegates from each State, which is granted the authority to establish minimum farm price for Class I (fluid) milk. The difference between the compact price and the Federal milk order price, or the "over-order obligation," is paid to the commission by the processors. The commission then redistributes these funds to compact producers based on the volume of milk sold by the farmer within the region.

The success of the Northeast Dairy Compact in promoting the viability of dairy farms and sustaining rural communities in New England has not gone unnoticed. Nineteen additional State legislatures have overwhelmingly passed compact legislation. Our legislation recognizes this strong support by allowing other regions of the country to form compacts of their own.

For all that the Compact accomplishes for farmers in the Northeast, one might think that it puts farmers from other parts of the country at a competitive disadvantage. However, this is not the case. The Compact Commission has institutional safeguards, as required by the Federal Farm Bill, to prevent overproduction of milk. Incentive payments are provided to farmers who do not increase production, and have actually led to a decrease of 5.6 percent in the amount of milk produced in the region. Consequently, we can be sure that surplus milk from the Northeast is not impacting milk markets in other regions of the country. It is important to note that our legislation includes the overproduction protections included in the original Dairy Compact legislation.

The Northeast Dairy Compact is set to expire on September 30, 2001. While the saying goes that all good things must come to an end, I do not believe that ought to be the case with the Compact. Dairy farmers in my State agree and have written, e-mailed, and called to express to me their hope that Congress will extend the authorization for the Compact. I have an appreciated hearing just how important the Compact is to my constituents, and I look forward to working with my colleagues in the Senate to see that the Dairy Consumers and Producers Protection Act is enacted.

Mr. JOHNSON. Mr. President, I rise today to strongly support the extension and the expansion of the Northeast Dairy Compact as a reasonable and proven way to help dairy farmers in New England and beyond.

Dairy farms are truly the agricultural heart of New York State. Their survival is vital to the economic, social, and cultural well-being of the State. I am such an enthusiastic advocate for the region that I'm on the means to maintain not only healthy dairy farms in my State, but the rural settings and communities upon which so much of New York and the rest of the country depend.

Historically, farmers have been subject to unpredictable and unacceptable fluctuations in prices. In the face of such uncertainty, the current Federal price support system was designed to provide basic levels of assistance to dairy farmers in New York and elsewhere. However, the support provided, while helpful, is often inadequate. Many dairy farmers in New York and elsewhere are unable to operate at a profit. As a remedy, the Dairy Compact was designed to provide producers with supplemental support, through assessments to processors, when the Marketing Order price is low. Most importantly, the price stability afforded by the Compact is especially important to farmers as a planning tool.

As originally implemented, the Dairy Compact did not include New York. The Bill that has been introduced would allow New York State and other States in the Northeast, Southeast and elsewhere to join the Compact. The New York Legislature, like 25 other State Legislatures, has voted to join the Compact. Why? Because over the 4 years that the Compact has been in existence it has made the difference for many of my constituents who maintain relatively healthy amounts of consolidation. It also helps to preserve the rural life style, the countryside settings with open spaces, and the economic core of communities that are so important to my New York and so many others.

The Dairy Compact is an effective way for States, New York and others, to obtain from Congress the regulatory authority over the region's interstate markets for milk. It offers a price stability that is incredibly helpful, and it helps to slow the demise of a tradition that our country holds dear, the family farm.

Ms. SNOWE. Mr. President, I rise today to join Senator SPECTER of Pennsylvania in support of the Dairy Consumers and Producers Protection Act of 2001. We are joined by 37 of our colleagues from New England and throughout the Mid-Atlantic and the Southeast.
This legislation reauthorizes the very successful Northeast Interstate Dairy Compact which allows the producers of milk to, as a dairy farmer from York Country, ME, recently said, set a little higher bottom for the price of locally produced fresh milk. The current Compact also allows for an adjustment cost to the current Federal milk marketing order system that already sets a floor price for fluid milk in New England. The bill also gives approval for States contiguous to the participating New England States to join. In this case, Pennsylvania, New York, New Jersey, Delaware, and Maryland.

The legislation also grants Congressional approval for a new Southern Dairy Compact, made up of 14 States: Alabama, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia.

This issue was really a State rights issue and nothing else, Mr. President, as the only action the Senate needs to take is to give its congressional consent under the Compact Clause of the United States Constitution, Article I, section 10, clause 3, to allow the 25 States to proceed with their two independent compacts.

All of the legislatures in these twenty-five States have ratified legislation that allows their individual States to join a Compact, and the Governor of every State has signed a compact bill into law. Half of the States in this country, await our Congressional approval to address farm insecurity by stabilizing the price of fresh fluid milk on grocery shelves and to protect consumers against volatile price swings.

All of the Northeast and Southern Compact States together make up about 28 percent of the Nation’s fluid milk market—New England production is only about 3½ percent of this. This is somewhat comparable to Minnesota’s milk market—New England production is about 28 percent of the Nation’s fluid milk market. All of the legislatures in these twenty-five States have ratified legislation that allows their individual States to join a Compact, and the Governor of every State has signed a compact bill into law. Half of the States in this country, await our Congressional approval to address farm insecurity by stabilizing the price of fresh fluid milk on grocery shelves and to protect consumers against volatile price swings.

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Over ninety-seven percent of the fluid milk market in New England is contained within the area, and fluid milk markets are local due to the demand for freshness and because of high transportation costs, so any complaints raised in other areas about unfair competition to Maine’s dairy farmers are the most stable in the country. No wonder other States want to follow our lead.

When Congress wants to try something new, it often sets up a pilot program to test out an idea in a particular locality or region, and then appraises the outcome. The result of such a program was successful. This is how the Northeast Dairy Compact originated as it was included in the 1996 Farm bill as a three year pilot program—to sunset on April 1, 1999. It has the adoption of the required consolidation of Federal milk marketing orders. The milk marketing orders were extended until October 1, 1999 in the Omnibus Appropriations of FY 1999, which also automatically extended the Compact until October 1, 1999.

Because of efforts by myself and other Compact supporters, we fought to receive a two-year extension of the Northeast Compact, which was incor- porated into the Omnibus Appropriations for FY 2000. The Compact will expire on September 30 of this year if no further action is taken by this body.

I want to explain to my colleagues how important the continuation of the Northeast Dairy Compact is to me and the dairy farmers and consumers in Maine. I stand here not with my hand outstretched for federal farm dollars for the income received by farmers in my State, only about 9 percent comes from Federal funding, unlike other States whose income received through Federal dollars is well over 75 percent—rather to urge you to support such a successful program that does not cost the federal government one penny—not one cent, and is supported by the very people affected by it.

I plan to use every avenue open to me to make sure the—Compact spending bill funding several government agencies for FY 2000. The Compact will expire on September 30 of this year if no further action is taken by this body.

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the region over the Federal milk marketing order floor price does not create an incentive for producers to generate additional supplies of milk. When there has been a rise in the Federal floor price for Class I fluid milk, the Compact has automatically shut itself off from the Federal market. Since there is no incentive to overproduce, there has been no rush to increase milk production in the Northeast as was feared by Compact opponents. No other region should feel threatened by a dairy compact in the Northeast. Dairy milk produced and sold mainly at home.

The consumers in the Northeast Compact area, the now in the Mid-Atlantic area and the Southeast area, have shown their willingness to pay a few pennies more for their milk if the additional money is going directly to the dairy farmer. Environmental organizations have also supported dairy compacting as Compacts help to preserve dwindling agricultural land and open space.

I urge my colleague not to look success in the face and turn the other way, but to support us in passing this legislation that half of our states have requested.

Mrs. CLINTON. Mr. President. I am pleased to join with my colleagues today as an original cosponsor of the Dairy Consumers and Producers Protection Act of 2001. This legislation is vitally important to New York dairy farmers, New York's economy, and rural communities around the country.

From Watertown and Glen Falls to Ithaca and Jamestown, NY farmers and New York farms are an invaluable part of our State's economy and its landscape. Agriculture is one of New York's top industries. What is grown in our State makes its way to homes and kitchen tables across the country, and around the world.

In particular, the dairy industry is a pillar of New York's economy. Milk is New York's leading agricultural product, creating almost $2 billion in receipts. And New York ranks third in the country in terms of the value of dairy products sold, surpassed only by California and Wisconsin.

Yet, as I travel throughout New York State, I meet dairy farmers who are working harder, but still struggling to make ends meet. Volatile milk prices make it very difficult for New York dairy farmers to negotiate loans, to invest in expansion, and to plan for the future.

That is why it is so important that we join with our colleagues from other States to expand the Northeast Dairy Compact to include New York. If New York had been a member of the Northeast Dairy Compact last year, the over 7,000 dairy farms in New York would have received an estimated $132.6 million in payments, an average of $18,200 for each farm, thereby increasing income to New York farmers by approximately eight percent.

In addition, New York farmland and farms have become prime land for development and sprawl. We must make sure that farmers across New York and around the country get the help that they need to hold onto their farms, and to preserve our fields and open spaces. They are an important part of what makes New York so unique and so beautiful.

Helping to preserve New York's dairy farms by expanding the Northeast Dairy Compact is the right thing to do. Not only does it ensure the security of our dairy farmers in New York and in other parts of the country, it guarantees an adequate supply of fresh milk at reasonable prices and helps to preserve precious open space.

Mr. JEFFORDS. Mr. President, today, I rise today to express my support for the Dairy Consumers and Producers Protection Act of 2001, important legislation that would re-authorize and expand the Northeast Dairy Compact, and ratify a Southern Compact. Growing support and recognition of the importance of the Northeast Dairy Compact has led twenty-five States to enact compact legislation. These States now look to Congress to grant them the right to join the Northeast Compact, or to form a Southern Compact.

It is critical that we keep pace with the demands of State governments, and provide them with the authority to develop a regional pricing mechanism for Class I (fluid) milk. Farmers across our Nation face radically different conditions and factors of production. Differences in climate, transportation, feed, energy and land value validate the need for regional pricing. Compacts allow States to address these differences and create a price level that is appropriate for producers, processors, retailers, and consumers.

The Northeast Dairy Compact was originally authorized as a three-year pilot program in the 1996 Farm Bill. Since July of 1997, when the Compact Commission first set the Class I over-order price at $16.94, the Northeast Dairy Compact has proven to be a great success, providing farmers with a fair price for their milk, protecting consumers from price spikes, reducing market dependency upon milk from a single source, controlling excess supply, and helping to preserve rural landscapes by strengthening farm communities. And, unlike so many of our policies and programs, the benefits of the dairy compact are realized at no cost to the Federal Government.

The Northeast Dairy Compact is managed by the Compact Commission. The Commission, comprised of 26 delegates from the six New England member States, includes producers, processors, retailers and consumer representatives. Each State governor appoints three or five delegates to represent their State's vote on the Commission. The Commission meets at least monthly to evaluate and establish the current Compact over-order price for Class I (fluid) milk. Using a formula rule-making process, the Commission hears testimony to establish a price that takes into account the purchasing power of the public, and the price necessary to yield a reasonable return to producers and distributors. Any price change proposed by the Commission is subject to a two-thirds vote by the State delegations as well as a producer referendum.

The Compact Commission's price regulation works in conjunction with the Federal Government's pricing program, which establishes minimum prices paid to dairy farmers for their raw milk. Under the Compact, processors pay the difference between the Compact over-order price for fluid milk, currently $16.94, and the price established monthly by federal regulation for the same milk. The over-order premium is paid on class I (fluid) milk, and is only paid when the Compact over-order price is higher than the price set by the Federal milk marketing orders. Processors pay the over-order premium for other dairy products such as cheese or ice cream are not subject to the Compact's pricing regulations, although all farmers producing milk in the region, for any purpose, share equally in the Compact's benefits.

In order to protect low-income consumers from any increases in cost caused by the Compact, the Compact legislation imposes regulations on the Commission requiring that the Women, Infants and Children, WIC program, as well as School Lunch Programs, must be reimbursed for any additional costs they may incur as a result of compact activity. Three percent of the pooled proceeds are set aside to fulfill these obligations.

Compact legislation also contains a clause that holds the Commission responsible for any purchases of milk or milk products by the Commodity Credit Corporation, CCC, that result from the operation of the Compact. The Secretary of Agriculture has the authority to determine those costs and ensure that the Commission honors its obligations.

After money is withheld for the WIC and School Lunch programs, as well as the WIC program, the Compact Commission makes disbursements to farmer cooperatives and milk handlers. These entities then make payments to individual farmers based on their level of production. The payments are only made when the Federal market order price falls below the price set by the Compact Commission, effectively creating a floor for milk prices. This, in turn, decreases price volatility in the region.

The stability created by the Compact pricing mechanism is important for several reasons. It guarantees farmers a fair price for their product and allows them to plan for the future. Farmers, knowing that they can count on a fair price, can allocate money to purchase and repair machinery, improve farming practices, and above all, stay in business.
Throughout our great Nation, the family farm continues to be a vital part of our rural community and agricultural infrastructure. In New England, and across our country, farms continue to support our rural economies. Farms create economic stability by supporting local businesses, such as feed stores, farm equipment suppliers and local banks. The continuing disappearance of small farms is making life very difficult for agribusinesses and disrupting the overall rural economic infrastructure.

The importance of the family farm extends well beyond the rural economy, however. Preservation of the family farm has important environmental consequences as well. Numerous environmental organizations have expressed their support for dairy compacts. They recognize the ability of compacts to protect our farms and preserve our dairy industry. These organizations include the Sierra Club, the Conservation Law Foundation and the National Trust for Historic Preservation. These groups, as well as numerous other environmentally conscious organizations, recognize farmers as good stewards of the land, and value the ability of farms to sustain productive use of the land, while preserving open space.

Even though compacts enjoy widespread support across much of our country, opponents have worked tirelessly to undermine the merits of dairy compacts. These critics, however, must contend with the strong record of success that the Northeast Dairy Compact has put forth.

During its first four years, the Northeast Compact has stood up to numerous legal challenges. Courts have ruled in favor of the Compact on every level, including the U.S. Supreme Court. The courts have recognized the Compact as a proper and constitutional grant of state authority, permitted under the Commerce and Compact clauses of the U.S. Constitution. These decisions have upheld the Commission’s authority to regulate milk within the region, as well as milk produced outside of the region.

Concerns have also been raised about the Compact’s effect on interstate trade. Opponents of the Northeast Compact argue that compacts restrict the movement of milk between States that are in the Compact, and States that lie outside the Compact. Compacts, however, do not restrict the movement of milk into the region. For example, producers in eastern New York State benefit from the Northeast Compact. By shipping their milk in the region, farmers are eligible to receive the Compact price for their products. Another common misconception is that the Compact leads to overproduction. The Northeast Dairy Compact, however, has not led to overproduction during its first four years. In fact, during 2000, the Northeast Dairy Compact states produced 4.7 billion pounds of milk, a 0.6 percent reduction from 1999.

Since the Northeast Dairy Compact has been in effect, milk production in the region has risen by just 2.2 percent. Nationally, milk production rose 7.4 percent from 1997 to 2000. Over this same period, California, the largest milk producing State in the country, increased its milk production by 18.9 percent.

To protect against overproduction, the Compact Commission has developed a supply management program that reduces milk supply and increases production. Under the program, 75 cents per hundred-weight is withheld by the Commission. This money is refunded to producers that have not increased their production by more than 1 percent during the given year. While this program has only been in place since 2000, we believe that it will be a useful tool in preventing overproduction.

Finally, opponents argue that compacts are harmful to consumers, especially the marginal dairy farmer. The facts show that not the case. On May 2, 2001, an independent study out of the University of Connecticut’s Food Marketing Policy Center offers new evidence regarding the impact of the Northeast Dairy Compact on consumer prices. The Food Marketing Policy Center performed a four-year analysis of retail milk prices using supermarket scanner data from 18 months prior to Compact implementation, up through the summer of 2000. The study opined that volatile prices preceding Compact implementation, as well as the pricing behavior that followed. The study found that the Northeast Dairy Compact was responsible for only 4.5 cents of the 29-cent increase in retail prices following Compact implementation. The study concludes that wider profit margins by processors and retailers account for 11 cents of the 29-cent increase. Since the Compact went into effect, these wide profit margins have driven up prices near the milkman delivering “fresh” milk to the consumer’s doorstep is a thing of the past, that doesn’t mean that consumers don’t want fresh milk.” At this time, I would ask unanimous consent that Jim Tillison’s article, “Let’s Talk About Compacts” be submitted for the RECORD.

Under our legal system, individual states have the authority to establish their own dairy pricing mechanisms. Because of the nature and size of the dairy industries in the Northeast and South, states in these regions are better served by compacts than states outside of the region. “Consumers like the idea of milk for their kids being produced locally. Even though the milkman delivering “fresh” milk to the consumer’s doorstep is a thing of the past, that doesn’t mean that consumers don’t want fresh milk.” At this time, I would ask unanimous consent that Jim Tillison’s article, “Let’s Talk About Compacts” be submitted for the RECORD.

The Compact has been extremely successful in demonstrating the merits of compact legislation. We no longer need to speculate about the potential effects of compacts. We now have the hard evidence, they are good for farmers, good for consumers, and good for the environment. I ask that the Senate recognize this by extending and expanding the Northeast Dairy Compact, and ratifying a Southern Compact.

In closing, I urge the Senate to support this important legislation. Our States have come to us, and asked us to extend the benefits of compact legislation to their states. We must grant them the minimum farm price of milk, the right to save their family farms. We must grant them that right.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Cheese Market News, May 11, 2001]

LET’S TALK ABOUT COMPACTS
(By Jim Tillison)

Here we go again. The issue of dairy compacts is heating up once again. Studies have been done and to no one’s surprise they are biased depending on which aide you are on. Let’s try to look past all the rhetoric to what is causing all the stir and discuss the stir that is being caused.

First, let us review the process involved in putting a dairy compact in place.

Secondly, the most detrimental state result in negotiating interstate commerce laws. In other words, it allows the dairy producers in a number of states to regulate the price of milk paid by fluid processors in those states. Any milk brought into the state for fluid purposes is subject to the compact. This process starts with the state legislatures in each state in which interested producers reside passing legislation supporting

June 29, 2001
CONGRESSIONAL RECORD — SENATE

Don’t ask me to respond to those kinds of comments. What hearing was ever held or separate vote taken on forward contracting? I don’t recall any serious discussion of the issue. There was a separate vote taken on forward contracting and I don’t recall any serious discussion of the issue...

Whereas American Indian tribal governments developed the fundamental principles of freedom of speech and separation of powers that form the foundation of the United States Government;

Whereas American Indians, Alaska Natives, and Native Hawaiians have tradition-ally exhibited a respect for the finiteness of natural resources through a reverence for the earth;

Whereas American Indians, Alaska Na-tives, and Native Hawaiians have tradition-ally exhibited a respect for the finiteness of natural resources through a reverence for the earth;

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Whereas American Indians, Alaska Na-
tives, and Native Hawaiians have tradition-ally exhibited a respect for the finiteness of natural resources through a reverence for the earth;
Whereas the AIDS pandemic is in the national interest of the United States, given that 42 percent of United States exports go to the developing world, where the incidence of AIDS is growing most rapidly;

Whereas in today’s globalized environment, goods, services, people—and disease—are moving at the fastest pace in world history;

Whereas we cannot insulate our citizenry from the global AIDS pandemic and related opportunistic disease, and we must provide leadership if we are to reverse global infection rates;

Whereas the AIDS pandemic is perhaps the most serious and challenging transnational issue facing the world in the post-Cold War era;

Whereas the AIDS pandemic is decimating local skilled workforces, straining fragile governments, diverting national resources, and undermining states’ ability to provide for their national defense or international peacemaking;

Whereas United Nations Secretary General, Kofi Annan, asserts that between $7,000,000,000 and $10,000,000,000 is needed annually to continue curbing the infection rate yet current international assistance efforts total roughly a little more than $1,000,000,000 per annum;

Whereas the United States has joined the call from the United Nations Secretary General, Kofi Annan, and others in support of a global fund to assist national governments, international organizations, and nongovernmental and community-based organizations in the prevention, care, and treatment of AIDS and AIDS-related illnesses; and

Whereas the United Nations Special Session on AIDS, taking place in June 2001, and the Group of Eight Industrialized Nations meeting in July 2001, are key opportunities for more states, governments, international organizations, the private sector, and civil society to donate assistance to the global fund: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the tragedy of the AIDS pandemic in human terms, as well as its devastating impact on national economies, infrastructures, political systems, and all sectors of society;

(2) strongly supports the formation of a Global AIDS and Health Fund;

(3) calls for the United States to remain open to providing greater sums of money to the global fund; all other donor countries in support of this endeavor;

(4) calls on other nations, international organizations, foundations, the private sector, and civil society to contribute to the global fund;

(5) urges all national leaders in every part of the world to speak candidly to their people about how to avoid contracting or transmitting the HIV virus;

(6) calls for the United States to continue to invest heavily in AIDS treatment, prevention, and research;

(7) urges international assistance programs to continue to emphasize science-based best practices and prevention in the context of a comprehensive program of care and treatment;

(8) encourages international health care infrastructures to better prepare themselves for the successful provision of AIDS care and treatment, including the administration of AIDS drugs;

(9) urges the Administration of President George W. Bush to encourage participants at the United Nations General Assembly Special Session on AIDS in June, and the Group of Eight Industrialized Nations meeting in July, to commit voluntary fund; and

(10) calls for United States representatives at the United Nations General Assembly Special Session on AIDS and Group of Eight Industrialized Nations meeting to emphasize the need to maintain focus on science-based practices and prevention in the context of a comprehensive program of care and treatment, combating mother-to-child transmission of the HIV virus, defeated opportunistic infections, and improving infrastructures and basic services where treatment medicines are available, and seek additional resources to support the millions of AIDS orphans worldwide.

SENATE RESOLUTION 120—ORGANIZATION OF THE SENATE

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

S. Res. 120

Resolved. That the Majority Party of the Senate for the 107th Congress shall have a one seat majority on every committee of the Senate, except that the Select Committee on Ethics shall have the same number of members of each party. No Senator shall lose his or her current committee assignments by virtue of this resolution.

Succ. 2 Notwithstanding the provisions of Rule XXV the Majority and Minority Leaders of the Senate are hereby authorized to appoint members of the committees consistent with this resolution composed equally of members from both parties. No Senator shall lose his or her current committee assignments by virtue of this resolution.

Succ. 3 Subject to the authority of the Standing Rules of the Senate, any agreements entered into regarding committee funding and space prior to June 5, 2001, between the Chairman and Ranking member of each committee shall remain in effect, unless modified by subsequent agreement between the Chairman and Ranking member.

Succ. 4 The provisions of this resolution shall cease to be effective, except for Sec. 3, if the ratio in the full Senate on the date of adoption of this resolution changes.

SENATE RESOLUTION 121—EXPRESSING THESENSE OF THE SENATE REGARDING THE POLICY OF THE UNITED STATES AT THE 53RD ANNUAL MEETING OF THE INTERNATIONAL WHALING COMMISSION

Mr. KERRY (for himself, Ms. SNOWE, Mr. HOLLINGS, Mr. MCCAIN, Mr. BIDEN, Mr. SARBANES, Mrs. BOXER, Mr. KENNEDY, and Mr. FEINGOLD) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 121

Whereas whales have very low reproductive rates, making whale populations extremely vulnerable to pressure from commercial whaling;

Whereas whales migrate throughout the world’s oceans and international cooperation is required to successfully conserve and protect whale stocks;

Whereas in 1946 the nations of the world adopted the International Convention for the Regulation of Whaling, which established the International Whaling Commission to provide for the proper conservation of the whale stocks;

Whereas the Commission adopted a moratorium on commercial whaling in 1982 in order to conserve and promote the recovery of whale stocks;

Whereas the Commission has designated the Indian Ocean and the ocean waters...
around Antarctica as whale sanctuaries to further enhance the recovery of whale stocks;

Whereas many nations of the world have designated waters under their jurisdiction as whale sanctuaries where commercial whaling is prohibited, and additional regional whale sanctuaries have been proposed by nations outside the jurisdiction of the Commission;

Whereas several member nations of the Commission have taken reservations to the Commission’s moratorium on commercial whaling; and the protests of other nations;

Whereas the Commission has adopted several resolutions at recent meetings asking member nations to abandon plans to initiate or continue commercial whaling activities conducted under reservation to the moratorium;

Whereas another member nation of the Commission has taken a reservation to the Commission’s Southern Ocean Sanctuary and continues to conduct unnecessary lethal scientific whaling in the waters of that sanctuary;

Whereas the Commission’s Scientific Committee has repeatedly expressed serious concerns about the scientific need for such lethal whaling;

Whereas scientific information on whales can readily be obtained through non-lethal means;

Whereas the lethal take of whales under reservations to the Commission’s policies have been increasing annually;

Whereas there continue to be indications that whale meat is being traded on the international market despite a ban on such trade under the Convention on International Trade in Endangered Species (CITES), and that meat is originating in one of the member nations of the Commission;

Whereas engaging in unauthorized commercial whaling and lethal scientific whaling undermines the conservation program of the Commission: Now, therefore, be it,

Resolved, That it is the sense of the Senate that—

(1) at the 53rd Annual Meeting the International Whaling Commission the United States of America should—

(A) remain firmly opposed to commercial whaling;

(B) initiate and support efforts to ensure that all activities conducted under reservations to the Commission’s moratorium or sanctuaries are conducted in accordance with the moratorium;

(C) oppose the lethal taking of whales for scientific purposes unless such lethal taking is specifically authorized by the Scientific Committee of the Commission;

(D) seek the Commission’s support for specific efforts by member nations to end illegal trade in whale meat; and

(E) support the permanent protection of whale populations through the establishment of whale sanctuaries in which commercial whaling is prohibited;

(2) at the 12th Conference of the Parties to the Convention on International Trade in Endangered Species, the United States should encourage other nations to adopt a moratorium on international trade in whale meat or downlist any whale population; and

(3) the United States should make full use of all appropriate diplomatic mechanisms, relevant international laws and agreements, and other appropriate mechanisms to implement the goals set forth in paragraphs (1) and (2).

Mr. KERRY. Mr. President, As Chairman of the Oceans and Fisheries Subcommittee, I rise today to submit a resolution regarding the policy of the
this year. The Hammersmith meeting must make progress in resolving the impasse within IWC, bringing whaling by Norway and Japan under international control as a matter of urgency. We must be sure that any discussion on the RMS incorporates rigorous safeguards to rein in current and potential whaling abuses.

The IWC's mandate requires first and foremost that it prevent the return of uncontrolled large-scale commercial whaling. This is the near-term agenda by which it will be judged. If this protection is not the main contribution it has to offer conservation of cetaceans more broadly. For the IWC to remain relevant over the long term, however, it must expand this protection to include the other human activities which threaten whales and focus attention on ensuring the survival of the most endangered species.

Ms. SNOWE, Mr. President, the resolution that Senator KERRY and I are submitting is very timely and important. As we work here in the Senate today, representatives of nations from around the globe are preparing for the 33rd Annual Meeting of the International Whaling Commission to be held in London July 23-27, 2001. At this meeting, the IWC will determine the fate of the world's whales through consideration of proposals to end the current moratorium on commercial whaling. The adoption of any such proposals by the IWC would mark a major setback in whale conservation. It is imperative that the United States remain firm in its opposition to any proposals to resume commercial whaling and that we, as a nation, continue to speak out passionately against this practice.

It is also time to close one of the loopholes used by nations to continue to whale without regard to the moratorium or established whale sanctuaries. The practice of unnecessary lethal scientific whaling is outdated and the value of the data of such research has been called into question by an international array of scientists who study the same population dynamics questions. The intentional harvest of whales in the name of science. This same whale meat is then processed and sold in the marketplace. These sentiments have been echoed by the Scientific Committee of the IWC which has repeatedly passed resolutions calling for the cessation of lethal scientific whaling, particularly that occurring in designated whale sanctuaries. They have offered to work with all interested parties to design research protocols that will not require scientists to harm or kill whales.

Last year, Japan expanded their scientific whaling program over the IWC's objections. The resolution that we are offering expresses the Sense of the Senate that the United States should continue to remain firmly opposed to any resumption of commercial whaling and oppose, at the upcoming IWC meeting, the non-necessary lethal taking of whales for scientific purposes.

Commercial whaling has been prohibited in U.S. waters for more than sixty years. In 1982, the continued decline of commercially targeted stocks led the IWC to declare a global moratorium on all commercial whaling which went into effect in 1986. The United States was a leader in the effort to establish the moratorium, and since then we have consistently provided a strong voice against commercial whaling and have worked to uphold the moratorium. This year the United States' strong support for a ban on commercial whaling at a time when our negotiations at the IWC most need that support. Norway, Japan, and other countries have made it clear that they intend to push for the elimination of the moratorium, and for a return to the days when whales were harvested as commodities.

The resolution would reiterate the U.S. objection to activities being conducted under reservations to the IWC's moratorium. The resolution would also oppose all efforts made at the Convention on International Trade in Endangered Species, CITES, to reopen international trade in whale meat or to downlist any whale population. In addition, the IWC, as well as individual nations including the United States, has established management programs that would prevent whaling in specified areas even if the moratorium were to be lifted. Despite these efforts to give whale stocks a chance to rebuild, the number of whales harvested has increased in recent years, tripling since the implementation of the global moratorium in 1986. This is a dangerous trend that does not show signs of stopping.

Domestically, we work very hard to protect whales in U.S. waters, particularly those considered threatened or endangered. Our own laws and regulations are designed to give whales one of the highest standards of protection in the world, and as a result, our own citizens are subject to rules designed to protect against even the accidental taking of whales. Commercial whaling is, of course, prohibited. Given what is asked of our citizens to protect against even accidental injury to whales here in the United States, it would be grossly unfair if we retreated in any way from our position opposing commercial, intentional whaling by other countries. Whales migrate throughout the world's oceans, and as we protect whales in our own waters, so should we act to protect them internationally.

Whales are among the most intelligent animals on Earth, and they play an important role in the marine ecosystem. Yet, there is still much about them that we do not know. Resuming the intentional harvest of whales is irresponsible, and it could have ecological consequences that we cannot predict. Therefore, it is premature to even consider such measures.

The right policy is to protect whales across the globe, and to oppose the resumption of commercial whaling. I urge my colleagues to support swift passage of this resolution.
they did yesterday. Other indicated war criminals should be transferred to The Hague and all political prisoners in Serbian jails should be immediately released.

There is no victory sweeter than justice. It is now up to the ICTY to deliver justice to the victims and the survivors of atrocities committed in Kosovo, Bosnia, and Croatia.

Mr. LEAHY. Mr. President, last year, when Senator MCCONNELL and I included language in the fiscal year 2001 Foreign Operations bill to condition United States assistance in Serbia on the Federal Republic of Yugoslavia’s cooperation with the War Crimes Tribunal, we could not predict what the effect of our provision would be. While we both wanted to support democracy and economic reconstruction in Serbia, we also felt strongly that if Serbia’s leaders wanted our assistance they should fulfill their international responsibility to apprehend and surrender indicted war criminals to The Hague.

I am very grateful for the way Senator MCCONNELL and his staff have worked closely with me and my staff on this. It has been a classic case of how conditioning our assistance and working together, with the Administration, can achieve a result that significantly advances the cause of international justice. Milosevic’s transfer to the War Crimes Tribunal should bring hope to millions of people throughout the former Yugoslavia.

Above all, as Senator MCCONNELL has already noted, we should congratulate Prime Minister Djindjic and other Serb leaders who have risked their lives and their careers for their country’s future. It is a legacy that few people in history can claim. Those who have criticized Prime Minister Djindjic for surrendering Milosevic should be aware that for the United States there is no alternative. We will not support a Serb Government that does not cooperate with the War Crimes Tribunal. We expect the apprehension and transfer to The Hague of the other publicly indicted war criminals who remain at large in Serbia territory, and the release of the remaining political prisoners in Serbia’s jails.

I also want to recognize the Serb people who suffered terribly under Milosevic’s disastrous policies, and who increasingly saw that in order to rebuild their country and establish democracy and the rule of law on a solid footing, it was necessary to bring to justice the people who devastated the former Yugoslavia in their names. We submit this resolution on their behalf, and on behalf of Milosevic’s other victims, dead and alive, in Kosovo, Bosnia, and Croatia.

SENATE RESOLUTION 123—AMENDING THE STANDING RULES OF THE SENATE TO CHANGE THE NAME OF THE COMMITTEE ON SMALL BUSINESS TO THE “COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP”

Mr. KERRY (for himself and Mr. BOND) submitted the following resolution; which was considered and agreed to:

S. Res. 123
Resolved, That the Standing Rules of the Senate are amended—
1. In paragraph (1)(o) of rule XXV—
   a. by striking “Business,” and inserting “Business and Entrepreneurship,”
   b. by inserting “and Entrepreneurship” after “Committee on Small Business” each place that term appears;
   c. by inserting “and Entrepreneurship” after “Small Business”;
   d. by inserting “and Entrepreneurship” after “Committee on Small Business” each place that term appears.

SENATE CONCURRENT RESOLUTION 57—RECOGNIZING THE HEBREW IMMIGRANT AID SOCIETY

Mr. KENNEDY (for himself and Mr. BROWNBACK) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. Con. Res. 57
Whereas the United States has always been a country of immigrants and was built on the hard work and dedication of generations of those immigrants who have gathered on our shores;
Whereas, over the past 120 years, the Hebrew Immigrant Aid Society (HIAS), the oldest international migration and refugee resettlement agency in the United States, has assisted more than 5,000,000 migrants of all faiths to immigrate to the United States, Israel, and other safe havens around the world;
Whereas, since the 1970s, HIAS has resettled more than 400,000 refugees from more than 50 countries in the United States and provided high quality resettlement services through a network of local Jewish community social service agencies;
Whereas HIAS has helped bring to the United States such outstanding individuals as former Secretary of State Henry Kissinger, artist Marc Chagall, Olympic gold medalist Lenny Kravitz, poet and Nobel Laureate Joseph Brodsky, and author and restaurateur George Lang;
Whereas HIAS has assisted with United States refugee programs, often as a joint voluntary agency, providing refugee processing, cultural orientation, and other services in Moscow, Vienna, Tel Aviv, Rome, and Guam;
Whereas through publications, public meetings, and radio and television broadcasts, HIAS is a crucial provider of information, counseling, legal assistance, and other services, including outreach programs for the Russian-speaking immigrant community, to immigrants and asylum seekers in the United States;
Whereas HIAS plays a vital role in serving the needs of refugees, immigrants, and asylum seekers, and continues to work in areas of conflict and seeking to rescue those who are fleeing from danger and persecution; and
Whereas on September 9, 2001, HIAS will celebrate the 120th anniversary of its founding; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That a resolution—
1. Recognizes the Hebrew Immigrant Aid Society (HIAS), and the immigrants and refugees that HIAS has served, for the contributions they have made to the United States; and
2. Congratulates HIAS on the 120th anniversary of its founding.

(b) It is the sense of Congress that the President should issue a proclamation recognizing September 9, 2001, as the 120th anniversary of the founding of the Hebrew Immigrant Aid Society, and calling on the people of the United States to conduct appropriate ceremonies, activities, and programs to demonstrate appreciation for the contributions made by HIAS to the United States.

Mr. KENNEDY. Mr. President, I am proud to submit a resolution honoring the 120th anniversary of the founding of the Hebrew Immigrant Aid Society. During its distinguished history, the Society has helped more than 4 million immigrants and refugees to come to the United States, Israel, and other safe havens around the world. Since 1970, the Society has assisted more than 400,000 refugees from more than 50 countries in resettling in the United States, and these individuals have provided indispensable contributions to this country.

I also commend the Hebrew Immigrant Aid Society for its continuing efforts to remind this country of the importance of a wise policy on refugees. As conflict occurs throughout the world, the Society has helped ensure that the United States has an effective and humane response to each human tragedy. By maintaining a vigorous refugee resettlement program, we set an example for other nations to follow.

The Hebrew Immigrant Aid Society continues to have a vital role in serving the needs of refugees, immigrants, and asylum seekers. Our country owes it an enormous debt of gratitude, and I urge the Senate to agree to this well-deserved tribute.

SENATE CONCURRENT RESOLUTION 58—EXPRESSING SUPPORT FOR THE TENTH ANNUAL MEETING OF THE ASIA PACIFIC PARLIAMENTARY FORUM

Mr. AKAKA (for himself and Mr. INOUYE) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. Con. Res. 58
Whereas the Asia Pacific Parliamentary Forum was founded by former Japanese Prime Minister Yasuhiro Nakasone in 1993;
Whereas the Tokyo Declaration, signed by 59 parliamentarians from 15 countries, entered into force as the founding charter of the forum on January 14 and 15, 1993, establishing the basic structure of the forum as an inter-parliamentary organization;
Whereas the original 15 members, one of which was the United States, have increased to 27 member countries;
Whereas the forum serves to promote regional identification and cooperation...
through discussion of matters of common concern to all member states and serves, to a great extent, as the legislative arm of the Asia-Pacific Economic Cooperation; whereas the focus of the forum lies in resolving political, economic, environmental security, law and order, human rights, education, and cultural issues; whereas the forum will hold its tenth annual meeting on January 6 through 9, 2002, which will be the first meeting of the forum hosted by the United States; whereas approximately 270 parliamentarians from 27 countries in the Asia Pacific region will attend this meeting; whereas the Secretariat of the meeting will be the Center for Cultural and Technical Exchange Between East and West in Honolulu, Hawaii; whereas the East-West Center is an internationally recognized education and research organization established by the United States Congress in 1960 largely through the efforts of the Eisenhower administration and the Congress; whereas it is the mission of the East-West Center to strengthen understanding and relations between the United States and the countries of the Pacific region; whereas it help promote the establishment of a stable, peaceful and prosperous Asia Pacific community in which the United States is a natural, valued and respected partner; and whereas it is the agenda of this meeting to advance democracy, peace, and prosperity in the Asia Pacific region.

Now, therefore, the Congress of the United States of America doth resolves—

(1) express support for the tenth annual meeting of the Asia Pacific Parliamentary Forum and for the ideals and concerns of this body; (2) commends the East-West Center for providing a venue for the forum and for its past achievements; (3) calls upon all parties to support the endeavors of the Asia Pacific Parliamentary Forum and to work toward achieving the goals of the meeting.

Mr. AKAKA. Mr. President, on behalf of Senator INOUYE and myself, I rise to submit the following Resolution concerning the forthcoming tenth annual meeting of the Asia Pacific Parliamentary Forum, APPF, that will take place in Honolulu in January 2002. The Asia Pacific Parliamentary Forum consists of 27 countries of which the United States is one of the original founders. Our former colleague, Senator Bill Roth, was one of the leaders of this organization which was created as a parliamentary counterpart to the heads of state meeting of the Asia Pacific Economic Cooperation, APEC, organization.

The first meeting was held in Singapore in 1991, and, earlier this year, Chile sponsored the ninth annual meeting. Next year, for the first time, the annual meeting will be hosted by the United States in Hawaii. The Center for Cultural and Technical Exchange Between East and West, better known as the East West Center, will provide the Secretariat for the meeting which is expected to attract approximately 270 parliamentarians from countries in the Asia-Pacific region.

Participating countries include Australia, Canada, Chile, China, Russia, Mexico, South Korea, Peru, Ecuador, Costa Rica, Mongolia, the Philippines, and New Zealand. Discussions and debates are frank and open. The meetings provide an opportunity for legislators in these countries to hear and exchange views on a diversity of topics including human rights, security, law, the economy, and the environment.

I invite my colleagues to attend next year’s early January meeting in Hawaii. It is an occasion to meet with leaders on both sides of the Pacific for frank discussions, rich experience as well as the spirit of Aloha.

AMENDMENTS SUBMITTED AND PROPOSED

SA 850. Mr. NICKLES proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

SA 851. Mr. CRAIG proposed an amendment to the bill S. 1052, supra.

SA 852. Mr. NICKLES proposed an amendment to the bill S. 1052, supra.

SA 853. Mr. THOMPSON proposed an amendment to the bill S. 1052, supra.

SA 854. Mr. NICKLES and Mr. NICKLES proposed an amendment to the bill S. 1052, supra.

SA 855. Mr. CARPER proposed an amendment to the bill S. 1052, supra.

SA 856. Mr. FRIST (for himself and Mr. BREAUX) proposed an amendment to the bill S. 1052, supra.

SA 857. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 1052, supra; which was ordered to lie on the table.

SA 858. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 976, to provide authorization and funding for the enhancement of ecosystems, water supply, and water quality of the State of California; which was referred to the Committee on Energy and Natural Resources.

SA 859. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 976, supra; which was referred to the Committee on Energy and Natural Resources.

SA 860. Mr. REID (for Mr. KENNEDY (for himself and Mr. GRASSO)) proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

TEXT OF AMENDMENTS

SA 850. Mr. NICKLES proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage, as follows:

(1) The medical savings account demonstration program has been hampered with rules and regulations that restrict the use of medical savings accounts out of reach for millions of Americans.

(2) Medical savings accounts extend coverage to the uninsured. According to the Treasury Department, one-third of MSAs purchased previously had no health care coverage.

(3) The medical savings account demonstration program has been hampered with restrictions that put medical savings accounts out of reach for millions of Americans.

SA 851. Mr. CRAIG proposed an amendment to the bill S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage, as follows:

At the appropriate place insert the following:

SEC. 201. APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS.

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO FEDERAL HEALTH CARE PROGRAMS.

(1) APPLIcation of Standards.—

IN GENERAL.—Each Federal health care program shall comply with the patient protection requirements under title I, and such requirements shall be deemed to be incorporated into this section.

(2) CAUSE OF ACTION RELATING TO PROVISION OF PATIENT BENEFITS.—Any individual who receives a health care item or service under a Federal health care program shall have a cause of action against the Federal Government for violations of sections 34(c) of the Employee Retirement Income Security Act of 1974, and the provisions of such sections shall be deemed to be incorporated into this section.

(3) RULES OF CONSTRUCTION.—For purposes of this subsection—

(A) each Federal health care program shall be deemed to be a branch of the Federal Government; and

(B) the Federal Government shall be deemed to be the plan sponsor of each Federal health care plan; and

(C) each individual eligible for benefits under a Federal health care program shall be deemed to be a participant, beneficiary, or enrollee under that plan.
(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

(i) Equitable relief as provided for in section 502(n)(2);

(ii) Unlimited economic damages, including reasonable attorneys fees.

(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan’s administration or determination of a claim for benefits (notwithstanding the definition contained in section 502(n)(2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under section 502.

SA 855. Mr. CARPER proposed an amendment to the bill S. 1552, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 156, between lines 15 and 16, insert the following:

"(9) DAMAGES OPTIONS.—"(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

(i) Equitable relief as provided for in sub-section (a)(1)(B).

(ii) Unlimited economic damages, including reasonable attorneys fees.

(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan’s administration or determination of a claim for benefits (notwithstanding the definition contained in paragraph (2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under this section."

On page 170, between lines 21 and 22, insert the following:

"(9) DAMAGES OPTIONS.—"(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

(i) Equitable relief as provided for in section 502(n)(2);

(ii) Unlimited economic damages, including reasonable attorneys fees.

(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan’s administration or determination of a claim for benefits (notwithstanding the definition contained in section 502(n)(2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under section 502.

SA 856. Mr. FRIST (for himself and Mr. BREAUX) proposed an amendment to the bill S. 1552, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 156, between lines 15 and 16, insert the following:

"(17) DAMAGES OPTIONS.—"(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

(i) Equitable relief as provided for in subsection (a)(1)(B).

(ii) Unlimited economic damages, including reasonable attorneys fees.

(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan’s administration or determination of a claim for benefits (notwithstanding the definition contained in paragraph (2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under this section."

On page 170, between lines 21 and 22, insert the following:

"(9) DAMAGES OPTIONS.—"(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

(i) Equitable relief as provided for in section 502(n)(2);

(ii) Unlimited economic damages, including reasonable attorneys fees.

(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan’s administration or determination of a claim for benefits (notwithstanding the definition contained in section 502(n)(2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under section 502.

SA 857. Mr. THOMPSON proposed an amendment to the bill S. 1552, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; as follows:

On page 156, between lines 15 and 16, insert the following:

"(9) DAMAGES OPTIONS.—"(A) IN GENERAL.—In addition to plans or coverage that are subject to this Act, a plan or issuer may offer, and a participant or beneficiary may accept, a plan or coverage that provides for one or more of the following remedies, in which case the damages authorized by this section shall not apply:

(i) Equitable relief as provided for in subsection (a)(1)(B).

(ii) Unlimited economic damages, including reasonable attorneys fees.

(B) PROTECTION OF THE REGULATION OF QUALITY OF MEDICAL CARE UNDER STATE LAW.—Nothing in this paragraph shall be construed to preclude any action under State law against a person or entity for liability or vicarious liability with respect to the delivery of medical care. A claim that is based on or otherwise relates to a group health plan’s administration or determination of a claim for benefits (notwithstanding the definition contained in section 502(n)(2)) shall not be deemed to be the delivery of medical care under any State law for purposes of this section. Any such claim shall be maintained exclusively under section 502.
the Social Security Act (42 U.S.C. 1395d(e)(3)).

(b) Coverage of Emergency Ambulance Services.—If a group health plan, and a health insurance issuer that offers health insurance coverage, provides coverage for any benefits consisting of emergency ambulance services or services medically necessary and appropriate items or services related to the emergency medical condition that may be provided to a participant, beneficiary, or enrollee by a nonparticipating provider, that is medically necessary and appropriate items or services provided to a participant, beneficiary, or enrollee by a nonparticipating provider shall contact the plan or issuer as soon as practicable, but not later than 1 hour after stabilization occurs, with respect to whether—

(A) the provision of items or services is appropriate;

(B) the participant, beneficiary, or enrollee will be transferred; or

(C) other arrangements will be made concerning the payment of the participant, beneficiary, or enrollee.

(2) Failure to Respond and Make Arrangements.—If a group health plan, and a health insurance issuer that offers health insurance coverage, fails to respond and make arrangements within 1 hour of being contacted in accordance with paragraph (1), then the plan or issuer shall be responsible for the cost of any additional items or services provided by the nonparticipating provider if—

(A) the average for items or services of the type furnished by the nonparticipating provider is available under the plan or coverage;

(B) the items or services are medically necessary and appropriate and related to the emergency medical condition involved; and

(C) the timely provision of the items or services is medically necessary and appropriate.

(3) Rule of Construction.—Nothing in this subsection shall be construed to apply to a group health plan, and a health insurance issuer that offers health insurance coverage, that does not require prior authorization for items or services provided to a participant, beneficiary, or enrollee by a nonparticipating provider, that is medically necessary and appropriate and related to the emergency medical condition involved; and

(C) any items or services that are provided, imposed higher premiums or cost-sharing on the participant for the provision of a point-of-service coverage option; or

(3) to require that a group health plan include coverage of health care professionals that the plan excludes because of fraud, quality of care, or other similar reasons with respect to such professionals.

(e) Special Point of Service Protection for Individuals in Dental Plans.—For purposes of applying the requirements of this section under sections 2707 and 2753 of the Public Health Service Act and section 714 of the Employee Retirement Income Security Act of 1974, section 2791(c)(2)(A) of the Public Health Service Act and section 733(c)(2)(A) of the Employee Retirement Income Security Act of 1974, only relating to limited scope dental benefits, shall be deemed not to apply.


(a) General Rights.

(1) Direct Access.—A group health plan, and a health insurance issuer that offers health insurance coverage, described in subsection (b), may not require authorization or referral by the primary care provider described in subsection (b) in the case of a female participant, beneficiary, or enrollee who seeks coverage for obstetrical or gynecological care provided by a participating physician who specializes in obstetrics or gynecology.

(2) Obstetrical and Gynecological Care.—A group health plan, and a health insurance issuer that offers health insurance coverage, described in subsection (b) shall provide coverage for obstetrical and gynecological care, and the ordering of related obstetrical and gynecological items and services, pursuant to the direct access described in paragraph (1), to a participating health care professional who specializes in obstetrics or gynecology as the authorization of the primary care provider.

(3) Application of Section.—A group health plan, and a health insurance issuer that offers health insurance coverage, described in this subsection is a plan or issuer, that—

(1) provides coverage for obstetric or gynecologic care; and

(2) requires the designation by a participating provider of a specific obstetrician or gynecologist as the authorized obstetrician or gynecologist;

(b) Special Points of Service Protection.

(1) Coverage of Obstetrical and Gynecological Care.—The term ‘‘point-of-service coverage option’’ means, with respect to a participant, beneficiary, or enrollee under a group health plan, or a health insurance issuer that offers health insurance coverage, the terms of the plan for the cost of any additional items or services furnished to an individual who has an emergency medical condition to a treating facility for receipt of emergency medical care if—

(A) the emergency services are covered under the group health plan or health insurance coverage involved; and

(B) a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of such emergency medical treatment to result in placing the health of the participant, beneficiary, or enrollee by a nonparticipating provider under this section shall cease accruing on the earlier of—

(1) the transfer or discharge of the participating provider if—

(a) the emergency services are covered under the group health plan or health insurance coverage, or

(b) the participant, beneficiary, or enrollee will be transferred; or

(C) an emergency medical condition is referred to a participating health care professional who specializes in obstetrics or gynecology.

Section (b) may not require authorization or referral by the primary care provider described in subsection (b) in the case of a female participant, beneficiary, or enrollee who seeks coverage for obstetrical or gynecological care provided by a participating physician who specializes in obstetrics or gynecology.

(2) Rules of Construction.—Nothing in this section shall be construed—

(1) to require that a group health plan or a health insurance issuer approve or provide coverage for obstetrical or gynecological care; and

(2) to require that any items or services that are not medically necessary and appropriate or

(3) to require that any items or services that are provided, ordered, or otherwise authorized under subsection (b) by a participant for the provision of a point-of-service coverage option; or

(4) to require that any items or services are related to obstetric or gynecological care;
(2) to preclude a group health plan or health insurance issuer from requiring that the physician described in subsection (a) notify the designated primary care professional or any other physician, or the plan or issuer, that the physician, or the plan or issuer, shall permit the participant, beneficiary, or enrollee in involved in the treatment decision;

(3) to preclude a group health plan or health insurance issuer from requiring prior authorization, including prior authorization, for certain items and services from the physician described in subsection (a) who specializes in pediatrics as the child's primary care provider if such designation is permitted by the plan or issuer and the treatment by such physician is consistent with State licensure, credentialing, and scope of practice laws and regulations;

(4) to require that the participant, beneficiary, or enrollee described in subsection (a)(1) obtain authorization or a referral from a primary care provider in order to obtain obstetrical or gynecological care from a health care professional other than a physician if the provision of obstetrical or gynecological care by such health professional is permitted by the group health plan or health insurance coverage and consistent with State licensure, credentialing, and scope of practice laws and regulations.

SEC. 104. ACCESS TO PEDIATRIC CARE.

(a) INDIVIDUAL CARE.—If a group health plan, and a health insurance issuer that offers health insurance coverage, shall ensure that participants, beneficiaries, or enrollees to a nonparticipating specialist pursuant to clause (i), such specialty care shall be provided at no additional cost to the participant, beneficiary, or enrollee to a nonparticipating specialist pursuant to clause (i), such specialty care shall be provided at no additional cost to the participant, beneficiary, or enrollee to a nonparticipating specialist pursuant to clause (i), such specialty care shall be provided at no additional cost to the participant, beneficiary, or enrollee.

(b) NON-PARTICIPATING PROVIDERS.—If a group health plan, or a health insurance issuer that offers health insurance coverage, shall permit a participant, beneficiary, or enrollee to a nonparticipating specialist pursuant to clause (i), such specialty care shall be provided at no additional cost to the participant, beneficiary, or enrollee.

(c) TREATMENT PLANS.—

(A) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall permit a participant, beneficiary, or enrollee to a nonparticipating specialist pursuant to clause (i), such specialty care shall be provided at no additional cost to the participant, beneficiary, or enrollee.

(i) is life-threatening, degenerative, or disabling; and

(ii) requires specialized medical care over a prolonged period of time.

(B) TREATMENT PLANS.—

(1) IN GENERAL.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer that offers health insurance coverage, from requiring that specialty care be provided pursuant to a treatment plan so long as the treatment plan is developed by the specialist, in consultation with the case manager or primary care provider, and the participant, beneficiary, or enrollee.

(2) NOTIFICATION.—Nothing in paragraph (1) shall be construed as prohibiting a plan or issuer from requiring the specialist to provide the plan or issuer with regular updates on the specialty care provided, as well as all other necessary medical information.

(d) SPECIALIST DEFINED.—For purposes of this section, the term “specialist” means, with respect to the medical condition of the participant, beneficiary, or enrollee, a health care professional, facility, or center (such as a center of excellence) that has adequate expertise (including age-appropriate expertise) through appropriate training and experience.

SEC. 106. CONTINUITY OF CARE.

(a) TERMINATION OF PROVIDER.—If a contract between a group health plan, and a health insurance issuer that offers health insurance coverage, and a treating health care provider is terminated (as defined in paragraph (2)), or benefits or coverage provided by a health care provider are terminated because of a change in the terms of provider participation in such plan or coverage, and any individual who is a participant, beneficiary, or enrollee under such plan or coverage is undergoing an active course of treatment for a serious and complex condition, institutional care, pregnancy, or terminal illness from the provider at the time the plan or issuer receives or provides notice of such termination, the plan or issuer shall provide the individual with an opportunity to notify the plan or issuer of the individual’s need for transitional care; and

(b) TRANSITIONAL PERIOD.—

(1) SERIOUS AND COMPLEX CONDITIONS.—The transitional period under this section with respect to a serious and complex condition shall extend for up to 90 days from the date of the notice described in subsection (a)(1) of the provider’s termination.

(2) INSTITUTIONAL OR INPATIENT CARE.—

(A) IN GENERAL.—The transitional period under this section for institutional or non-elective inpatient care from a provider shall extend until the date on which:

(i) the expiration of the 90-day period beginning on the date on which the notice described in subsection (a)(1) of the provider’s termination is provided;

(ii) the date of discharge of the individual from such care or the termination of the period of institutionalization.

(B) NOTIFICATION.—The transition period described in paragraph (A)(1) shall include post-surgical follow-up care relating...
to non-elective surgery that has been scheduled before the date of the notice of the termination of the provider under subsection (a)(1).

(b) Pregnancy.—(A) A participant, beneficiary, or enrollee has entered the second trimester of pregnancy at the time of a provider's termination of participation.

(B) The provider was treating the pregnancy before the date of the termination.

(c) Exclusion of Certain Costs.—For purposes of paragraph (1), routine patient costs do not include the cost of the tests or measurements conducted for purposes of the clinical trial involved.

(d) Use of In-Network Providers.—If one or more participating providers is participating in a clinical trial, nothing in this paragraph (1) shall be construed as preventing a plan or issuer from requiring that a qualified individual participate in the trial through such a participating provider if the provider will accept the individual as a participant in the trial.

(2) Protection of Participating Physicians, Pharmacists, and Health Care Providers.—(A) In general.—(i) The Secretary shall, in consultation with the Food and Drug Administration, establish standards relating to the coverage of routine patient costs for individuals participating in clinical trials.
clinical trials that group health plans and health insurance issuers must meet under this section.

(B) FACTORS.—In establishing routine patient care costs associated with the conduct of clinical trials, including unanticipated patient care costs as a result of participation in clinical trials, (i) quality of patient care; and (ii) routine patient care costs versus costs associated with the conduct of clinical trials, including unanticipated patient care costs as a result of participation in clinical trials, (iii) previous and on-going studies relating to patient care costs associated with participation in clinical trials.

(C) APPOINTMENT OF COMMITTEE.—Not later than December 30, 2001, the Secretary shall appoint the members of the negotiated rulemaking committee under this subparagraph (A).

(i) PROHIBITION ON CERTAIN MODIFICATIONS.—In implementing the requirements of this section, a group health plan, and a health insurance issuer that offers health insurance coverage, may not—

(A) any incremental cost to group health plans and health insurance issuers resulting from the provisions of this section; (B) a projection of expenditures to such plans and issuers resulting from this section; and (C) any impact on premiums resulting from this section.

(SEC. 116. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR SECONDARY CONSULTATIONS.

(a) INPATIENT CARE.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the treatment of breast cancer is provided for a period of time after discharge, that provides coverage for a physician, in consultation with the patient, to be medically necessary and appropriate following—

(A) a mastectomy; (B) a lumpectomy; or (C) a lymph node dissection for the treatment of breast cancer.

(2) CONSTRUCTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician and patient determine that a shorter period of hospital stay is medically appropriate.

(b) PROHIBITION ON CERTAIN MODIFICATIONS.—In implementing the requirements of this section, a group health plan, and a health insurance issuer that offers health insurance coverage, may not—

(A) limit or modify the terms and conditions of coverage based on the determination of a participant, beneficiary, or enrollee to request less than the minimum coverage required under subsection (a).

(c) SECONDARY CONSULTATIONS.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, may not—

(A) any incremental cost to group health plans and health insurance issuers resulting from the provisions of this section; (B) a projection of expenditures to such plans and issuers resulting from this section; and (C) any impact on premiums resulting from this section.

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(c) SECONDARY CONSULTATIONS.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, may not—

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(A) a mastectomy; (B) a lumpectomy; or (C) a lymph node dissection for the treatment of breast cancer.

(2) CONSTRUCTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician and patient determine that a shorter period of hospital stay is medically appropriate.

(b) PROHIBITION ON CERTAIN MODIFICATIONS.—In implementing the requirements of this section, a group health plan, and a health insurance issuer that offers health insurance coverage, may not—

(A) limit or modify the terms and conditions of coverage based on the determination of a participant, beneficiary, or enrollee to request less than the minimum coverage required under subsection (a).

(c) SECONDARY CONSULTATIONS.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, may not—

(A) any incremental cost to group health plans and health insurance issuers resulting from the provisions of this section; (B) a projection of expenditures to such plans and issuers resulting from this section; and (C) any impact on premiums resulting from this section.

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(2) CONSTRUCTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician and patient determine that a shorter period of hospital stay is medically appropriate.

(b) PROHIBITION ON CERTAIN MODIFICATIONS.—In implementing the requirements of this section, a group health plan, and a health insurance issuer that offers health insurance coverage, may not—

(A) limit or modify the terms and conditions of coverage based on the determination of a participant, beneficiary, or enrollee to request less than the minimum coverage required under subsection (a).

(c) SECONDARY CONSULTATIONS.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer that offers health insurance coverage, may not—

(A) any incremental cost to group health plans and health insurance issuers resulting from the provisions of this section; (B) a projection of expenditures to such plans and issuers resulting from this section; and (C) any impact on premiums resulting from this section.
because the provider or specialist provided care to a participant, beneficiary, or enrollee in accordance with this section;  
(2) provide financial or other incentives to a physician or specialist to induce the physician or specialist to refer a participant, beneficiary, or enrollee to a particular provider who meets the terms and conditions of the plan or coverage dare to such coverage.  

SEC. 111. PROHIBITION OF DISCRIMINATION AGAINST PROVIDERS BASED ON LICENSURE.  
(a) In General.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall not discriminate with respect to participation or indemnification as to any provider who is acting within the scope of the provider’s license or certification under applicable State law, solely on the basis of such license or certification.  
(b) Construction.—Subsection (a) shall not be construed—  
(1) as requiring the coverage under a group health plan or health insurance coverage, of a participating or nonparticipating provider who meets the terms and conditions of the plan or coverage;  
(2) to override State licensure or scope-of-practice law; or  
(3) as requiring a plan or issuer that offers network coverage to include for participation in the network, any provider who meets the terms and conditions of the plan or coverage.  

SEC. 112. GENERALLY APPLICABLE PROVISION.  
Notwithstanding section 102, in the case of a group health plan, and a health insurance issuer that offers health insurance coverage, that provides benefits under 2 or more coverage options, the requirements of this subpart shall apply separately with respect to each coverage option.  

Subtitle B—Right to Information About Plans and Providers  

SEC. 121. HEALTH PLAN INFORMATION.  
(a) Requirement.—  
(1) DISCLOSURE.—  
(A) In General.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall provide for the disclosure of the information described in subsection (b) to participants, beneficiaries, and enrollees.  
(B) Time.—The information required by this subsection shall be provided to participants, beneficiaries, or enrollees at least annually.  
(2) ADMINISTRATIVE PROVISIONS.—A summary of the form of a summary notice provided not later than the date on which the reduction takes effect.  

(3) ANNUAL NOTICE.—A summary of the information required under subsection (b) shall be provided to participants, beneficiaries, and enrollees at least annually.  

Subtitle B—Right to Information About Plans and Providers  

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(1) DISCLOSURE.—  
(A) In General.—A group health plan, and a health insurance issuer that offers health insurance coverage, shall provide for the disclosure of the information described in subsection (b) to participants, beneficiaries, and enrollees.  
(B) Time.—The information required by this subsection shall be provided to participants, beneficiaries, or enrollees at least annually.  
(2) ADMINISTRATIVE PROVISIONS.—A summary of the form of a summary notice provided not later than the date on which the reduction takes effect.  

(3) ANNUAL NOTICE.—A summary of the information required under subsection (b) shall be provided to participants, beneficiaries, and enrollees at least annually.  

Subsection (b) to participants, beneficiaries, and enrollees seeking access to specialists care or referrals to participating and nonparticipating specialists, including the right to timely coverage for access to specialists care under section 108 if such section applies.  

(9) CLINICAL TRIALS.—A description the circumstances and conditions under which participation in clinical trials is covered under the plan or issuer, and the right to obtain coverage for approved clinical trials under section 107 if such section applies.  

(b) REQUIRED INFORMATION.—The information described under this section shall include for each option available under the group health plan or health insurance coverage the following:  
(1) BENEFITS.—A description of the covered benefits, including—  
(A) any in- and out-of-network benefits;  
(B) any cost-sharing requirements, including—  
(i) any premiums, deductibles, coinsurance, copayment amounts, and liability for balance billing above any reasonable and customary charges;  
(ii) any cost-sharing exemptions for participants, beneficiaries, or enrollees who meet the terms and conditions of the plan or coverage;  
(3) PROVIDER INFORMATION.—A description of the process for obtaining and maintaining information about the status of a participating provider or nonparticipating provider.  
(4) PROVIDING COVERAGE TO PARTICIPANTS, BENEFICIARIES, OR ENROLLEES.—A description of the process for determining whether a particular item, service, or treatment is experimental or investigational, and the circumstances under which such treatments are covered under the plan or issuer, and any additional specialized care coverage in obtaining covered benefits, filling a claim for benefits, and appealing coverage decisions internally and externally (including telephone numbers and mailing addresses of the appropriate authority), and a description of any additional legal rights and remedies available under section 503 of the Employee Retirement Income Security Act of 1974 (or sections 2707(b) and 2753(b) of the Public Health Service Act).  
(5) CLINICAL TRIALS.—A description of the circumstances and conditions under which participation in clinical trials is covered under the plan or issuer, and the right to obtain coverage for approved clinical trials under section 107 if such section applies.  

(b) REQUIRED INFORMATION.—The information described under this section shall include for each option available under the group health plan or health insurance coverage the following:  
(1) BENEFITS.—A description of the covered benefits, including—  
(A) any in- and out-of-network benefits;  
(B) any cost-sharing requirements, including—  
(i) any premiums, deductibles, coinsurance, copayment amounts, and liability for balance billing above any reasonable and customary charges;  
(ii) any cost-sharing exemptions for participants, beneficiaries, or enrollees who meet the terms and conditions of the plan or coverage;  
(3) PROVIDER INFORMATION.—A description of the process for obtaining and maintaining information about the status of a participating provider or nonparticipating provider.  
(4) PROVIDING COVERAGE TO PARTICIPANTS, BENEFICIARIES, OR ENROLLEES.—A description of the process for determining whether a particular item, service, or treatment is experimental or investigational, and the circumstances under which such treatments are covered under the plan or issuer, and any additional specialized care coverage in obtaining covered benefits, filling a claim for benefits, and appealing coverage decisions internally and externally (including telephone numbers and mailing addresses of the appropriate authority), and a description of any additional legal rights and remedies available under section 503 of the Employee Retirement Income Security Act of 1974 (or sections 2707(b) and 2753(b) of the Public Health Service Act).  
(5) CLINICAL TRIALS.—A description of the circumstances and conditions under which participation in clinical trials is covered under the plan or issuer, and the right to obtain coverage for approved clinical trials under section 107 if such section applies.  

(b) REQUIRED INFORMATION.—The information described under this section shall include for each option available under the group health plan or health insurance coverage the following:  
(1) BENEFITS.—A description of the covered benefits, including—  
(A) any in- and out-of-network benefits;  
(B) any cost-sharing requirements, including—  
(i) any premiums, deductibles, coinsurance, copayment amounts, and liability for balance billing above any reasonable and customary charges;  
(ii) any cost-sharing exemptions for participants, beneficiaries, or enrollees who meet the terms and conditions of the plan or coverage;  
(3) PROVIDER INFORMATION.—A description of the process for obtaining and maintaining information about the status of a participating provider or nonparticipating provider.  
(4) PROVIDING COVERAGE TO PARTICIPANTS, BENEFICIARIES, OR ENROLLEES.—A description of the process for determining whether a particular item, service, or treatment is experimental or investigational, and the circumstances under which such treatments are covered under the plan or issuer, and any additional specialized care coverage in obtaining covered benefits, filling a claim for benefits, and appealing coverage decisions internally and externally (including telephone numbers and mailing addresses of the appropriate authority), and a description of any additional legal rights and remedies available under section 503 of the Employee Retirement Income Security Act of 1974 (or sections 2707(b) and 2753(b) of the Public Health Service Act).  
(5) CLINICAL TRIALS.—A description of the circumstances and conditions under which participation in clinical trials is covered under the plan or issuer, and the right to obtain coverage for approved clinical trials under section 107 if such section applies.  

(b) REQUIRED INFORMATION.—The information described under this section shall include for each option available under the group health plan or health insurance coverage the following:  
(1) BENEFITS.—A description of the covered benefits, including—  
(A) any in- and out-of-network benefits;  
(B) any cost-sharing requirements, including—  
(i) any premiums, deductibles, coinsurance, copayment amounts, and liability for balance billing above any reasonable and customary charges;  
(ii) any cost-sharing exemptions for participants, beneficiaries, or enrollees who meet the terms and conditions of the plan or coverage;  
(3) PROVIDER INFORMATION.—A description of the process for obtaining and maintaining information about the status of a participating provider or nonparticipating provider.  
(4) PROVIDING COVERAGE TO PARTICIPANTS, BENEFICIARIES, OR ENROLLEES.—A description of the process for determining whether a particular item, service, or treatment is experimental or investigational, and the circumstances under which such treatments are covered under the plan or issuer, and any additional specialized care coverage in obtaining covered benefits, filling a claim for benefits, and appealing coverage decisions internally and externally (including telephone numbers and mailing addresses of the appropriate authority), and a description of any additional legal rights and remedies available under section 503 of the Employee Retirement Income Security Act of 1974 (or sections 2707(b) and 2753(b) of the Public Health Service Act).  
(5) CLINICAL TRIALS.—A description of the circumstances and conditions under which participation in clinical trials is covered under the plan or issuer, and the right to obtain coverage for approved clinical trials under section 107 if such section applies.
such Act and approving coverage pursuant to the written determination of an independent medical reviewer under section 503B of such Act. Notice of whether the benefits under the plan or issuer are provided as a contracted service or as an item or service of insurance issued by an issuer, or whether benefits are provided directly by the plan sponsor who bears the insurance risk.

(15) PROVIDERS.—A summary description of any translation or interpretation services (including the availability of printed information in languages other than English, in braille, sign language, audio tapes, or information in Braille) that are available for non-English speakers and participants, beneficiaries, and enrollees with communication disabilities and a description of how to access these items or services.

(16) ACCREDITATION INFORMATION.—Any information available by a certifying or accrediting organization in the process of accreditation if the plan or issuer is accredited, or any additional quality indicators (such as the results of enrollee satisfaction surveys) that the plan or issuer makes public or makes available to participants, beneficiaries, and enrollees.

(17) NOTICE OF REQUIREMENTS.—A description of any rights of participants, beneficiaries, and enrollees that are established by this Act (excluding those described in paragraph (16) if such rights apply). The description required under this paragraph may be combined with the notices required under sections 711(d), 713(b), or 606(a) of the Employee Retirement Income Security Act of 1974, and with any other notice provision that the Secretary determines may be combined.

(18) COMPENSATION METHODS.—A summary description of the methods (including capitalization, fee-for-service, salary, withholds, bonuses, bundled payments, per diem, or a combination of such means) used for compensating participating health care professionals (including primary care providers and specialists) and facilities in connection with the provision of health care under the plan or coverage. The requirement of this paragraph shall not be construed as requiring plans or issuers to provide information concerning proprietary payment methodology.

(19) DISENROLLMENT.—Information relating to the disenrollment of a participant, beneficiary, or enrollee.

(20) AVAILABILITY OF ADDITIONAL INFORMATION.—A statement that the information described in subsection (c), and instructions on obtaining such information (including telephone numbers and, if available, Internet websites), shall be made available upon request.

(c) ADDITIONAL INFORMATION.—The informational materials to be provided upon the request of a participant, beneficiary, or enrollee shall include for each option available upon request with plan or health insurance coverage the following:

(1) STATUS OF PROVIDERS.—The State licensure status of the plan or issuer's participating health care professionals and participating health care facilities, and, if available, the education, training, specialty qualifications or certifications of such professionals.

(2) PRESCRIPTION DRUGS.—Information about whether a specific prescription medication is included in the formulary of the plan or issuer, if the plan or issuer uses a defined formulary.

(3) EXTERNAL APPEALS INFORMATION.—Aggregate information on the number and outcomes of external medical reviews, relative to the sample size (such as the number of covered lives) determined for the plan or issuer.

(d) MANNER OF DISCLOSURE.—The information described in this section shall be disclosed in an accessible medium and format that is calculated to be understood by the average participant.

(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit an issuer from developing a group health plan, or a health insurance issuer that offers health insurance coverage, from:

(1) distributing any other additional information determined by the plan or issuer to be important or necessary in assisting participants, beneficiaries, and enrollees in the selection of the plan or issuer to comply with the requirements of this section, and

(2) complying with the provisions of this section by providing information in brochures, through the Internet or other electronic means of similar means, so long as participants, beneficiaries, and enrollees are provided with an opportunity to request that informational materials be provided in printed form.

(f) CONFORMING REGULATIONS.—The Secretary shall issue regulations to coordinate the requirements on group health plans and health insurance issuers under this section with the requirements imposed under part 1, to reduce duplication with respect to any information that is required to be provided under any such requirements.

(g) SECRETarial ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall issue regulations to coordinate the requirements of this section.

(2) AMOUNT OF PENALTY.—

(A) IN GENERAL.—The amount of the penalty to be imposed under paragraph (1) shall be increased by $100 for each additional person for which the failure to comply with the requirements of this section occurs.

(B) INCREASE IN AMOUNT.—The amount referred to in subparagraph (A) shall be increased or decreased, for each calendar year that ends after December 31, 2001, by the same percentage as the percentage by which the medical care expenditure category of the Consumer Price Index for All Urban Consumers in the United States city average, published by the Bureau of Labor Statistics, for September of the preceding calendar year has increased or decreased, for each calendar year that ends after December 31, 2001.

(3) FAILURE DEFINED.—For purposes of this subsection, a plan or issuer shall have failed to comply with the requirements of this section if the plan or issuer, beneficiary, or enrollee with respect to which the failure to comply with the requirements of this section was first determined to have occurred by the written determination of an independent medical reviewer under section 503B of such Act.

(4) CONTRACTS.—The Secretary shall issue regulations to coordinate the requirements imposed under part 1, health insurance issuers under this section, with the requirements imposed under part 3, issuers of group health plans and issuers of health insurance policies (as appropriate).

(h) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—The Secretary, acting after the date of enactment of this Act, shall enter into a contract with the Institute of Medicine to prepare a report, that includes—

(A) an analysis of information concerning barriers to the availability of health care professionals and their specialties; and

(B) an evaluation of the other barriers to the sharing of information concerning health care professionals; and

(2) STUDY DESIGN.—The Secretary shall consult with the Director of the Agency for Healthcare Research and Quality in preparing the scope of work and study design with respect to the contract under paragraph (1).

(i) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a copy of the report conducted under subsection (a).

SEC. 122. INFORMATION ABOUT PROVIDERS.

(a) STUDY.—The Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine for the conduct of a study in accordance with this section, to be submitted to the Secretary and the Secretary of Labor as provided for in paragraph (4).

(b) MATTERS TO BE STUDIED.—The study conducted under paragraph (1) shall include—

(A) a study, including a survey if necessary, of physician compensation arrangements that are utilized in employer-sponsored group health plans (including group health plans sponsored by government and non-government employers) and commercial health insurance products, including—

(i) all types of compensation arrangements, including risk sharing arrangements and arrangements that do not contain such incentives and risk sharing, that reflect the complexity of organizational relationships between health plans and physicians; and

(ii) arrangements that are based on factors such as utilization management, cost control, quality improvement, and patient or enrollee satisfaction; and

(iii) arrangements between the plan or issuer and provider, as well as downstream arrangements between providers and subcontracted providers;

(B) an analysis of the effect of such differing arrangements on physician behavior with respect to patient care, including any impact to patients, including whether and how such arrangements affect the quality of patient care and the ability of physicians to provide care that is medically necessary and appropriate.

(3) STUDY DESIGN.—The Secretary shall consult with the Director of the Agency for Healthcare Research and Quality in preparing the scope of work and study design with respect to the contract under paragraph (1).

(4) REPORT.—Not later than 24 months after the date of enactment of this Act, the Secretary shall forward to the appropriate committees of Congress a copy of the report conducted under subsection (a).

(b) RESEARCH.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall conduct and support research to develop scientific evidence regarding the effects of differing physician compensation methods on physician behavior with respect to the provision of medical care to patients, particularly issues relating to the quality of patient care
and whether patients receive medically necess-
ary and appropriate care.

(2) AUTHORIZATION OF APPLICATONS.—
For purposes of carrying out this section, there
shall be appropriated such sums as may be necessary.

Subtitle C—Right to Hold Health Plans Accountable

SEC. 131. AMENDMENTS TO EMPLOYEE RETIRE-
MENT, INCOME SECURITY ACT OF 1974.

(a) In General.—Part 5 of subpart B of title I of the Employee Retirement Income Security Act of 1974 is amended by inserting after section 503 (29 U.S.C. 1133) the fol-
lowing:

``SEC. 503A. CLAIMS AND INTERNAL APPEALS PROCEDURES FOR GROUP HEALTH PLANS.

`(a) Initial Claim for Benefits Under Group Health Plans.—

` `(1) Procedures.—

` ``(A) In general.—A group health plan, or

` `health insurance issuer that offers health in-

` `surance coverage in connection with a group

` `health plan, shall maintain procedures for

` `processing claims for benefits described in

` `this subsection.

` ``(i) making a determination on an initial

` `claim for benefits by a participant or ben-

` `eficiary (or authorized representative) regard-

` `ing payment or coverage for items or ser-

` `vices under the terms and conditions of the

` `plan or coverage involved, including any cost-

` `sharing amounts that the participant or

` `beneficiary is required to pay with respect to

` `such claim for benefits; and

` ``(ii) notifying a participant or beneficiary

` `(or authorized representative) and the treat-

` `ing health care professional involved regard-

` `ing a determination on an initial claim for

` `benefits made under the terms and condi-

` `tions of the plan or coverage, including any

` `cost-sharing amounts that the participant or

` `beneficiary may be required to make with

` `respect to such claim for benefits, and of the

` `right of the participant or beneficiary to an

` `internal appeal under subsection (b).

` ` `(B) Access to Information.—With respect to

` `an initial claim for benefits, the partici-

` `pant or beneficiary (or authorized represent-

` `ative) and the treating health care profes-

` `sional (if any) shall provide the plan or

` `issuer with access to information requested

` `by the plan or issuer that is reasonably necessary to enable the

` `plan or issuer to make a determination on the

` `claim, but in no case shall such determination be made later than 28 business days after the receipt of the claim for benefits.

` `(3) Notice of a Denial of a Claim for Benefits.—Written notice of a denial made under an initial claim for benefits shall be issued to the participant or beneficiary (if applicable) and the treating health care professional (if any). If a notice under this paragraph is not provided within 72 hours after the request for such notice is made, the denial shall be treated as a denial of a claim for benefits under subsection (a) in which to appeal such denial under this sub-

` `(C) Prior Authorization Determinations.—

` `(i) In General.—A group health plan, or

` `health insurance issuer that offers health in-

` `surance coverage in connection with a group

` `health plan, or health insurance issuer that offers health in-

` `surance coverage in connection with a group

` `health plan, shall maintain procedures to

` `ensure that a prior authorization determina-

` `tion for benefits described in this subsection is made within 14 business days from the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination with respect to prior authorization, but in no case shall such determination be made later than

` `(ii) Expedited Determination.—Notwith-

` `standing clause (i), a group health plan, or

` `health insurance issuer that offers health in-

` `surance coverage in connection with a group

` `health plan, shall maintain procedures for

` `expediting a prior authorization determina-

` `tion described in this subsection.

` `(B) Time for Appeal.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall ensure that a participant or beneficiary (or authorized representative) may request such appeal orally, but a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan shall waive the internal review process under this sub-

` `(C) Plan Waiver of Internal Review.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain a more complete description written in a manner calculated to be understood by the average participant.

` `(1) Oral Requests.—In the case of a claim for benefits involving an expedited or concurrent determination, a participant or beneficiary (or authorized representative) may make an initial claim for benefits orally, but a group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a determination on an appeal of a denial of a claim for benefits under subsection (a) is made within 14 business days after the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination on the appeal, but in no case shall such determination be made later than 28 business days after the receipt of the request for the appeal.

` `(2) Timelines for Making Determina-

` `tions.—

` `(A) Prior Authorization Determina-

` `tions.—

` `(i) In General.—A group health plan, or

` `health insurance issuer that offers health in-

` `surance coverage in connection with a group

` `health plan, or health insurance issuer that offers health in-

` `surance coverage in connection with a group

` `health plan, shall maintain procedures to

` `ensure that a prior authorization determina-

` `tion for benefits described in this subsection is made within 14 business days from the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination with respect to prior authorization, but in no case shall such determination be made later than

` (June 29, 2001)
that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a concurrent determination on an appeal of a denial of a claim for benefits that results in a discontinuation of inpatient care is made within 24 hours after the receipt of the request for appeal.

(8) RETROSPECTIVE DETERMINATION.—A group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall maintain procedures to ensure that a retrospective determination on an appeal of a claim for benefits is made within 30 business days of the date on which the plan or issuer receives necessary information that is reasonably required by the plan or issuer to make a determination on the appeal, but in no case shall such determination be made later than 60 business days after the receipt of the request for the appeal.

(9) CONDUCT OF REVIEW.—

(A) IN GENERAL.—A review of a denial of a claim for benefits under this subsection shall be conducted by an individual with appropriate expertise, who was not directly involved in the initial determination.

(B) REVIEW OF MEDICAL DECISIONS BY PHYSICIANS.—A review of an appeal of a denial of a claim for benefits that is based on a lack of medical necessity or appropriateness, based on an experimental or investigational treatment, or requires an evaluation of medical facts, shall be made by a physician with appropriate expertise, including appropriate expertise, who was not involved in the initial determination.

(10) NOTICE OF DETERMINATION.—

(A) IN GENERAL.—As written notice of a determination made under an internal appeal of a denial of a claim for benefits shall be issued to the participant or beneficiary (or authorized representative) and the plan or issuer, and the treating health care professional not later than 2 business days after the completion of the review (or within the 72-hour or 24-hour period referred to in paragraph (2) if applicable).

(B) FINAL DETERMINATION.—The decision by a plan or issuer under this subsection shall be treated as the final determination of a denial of a claim for benefits under this section within the applicable timeline established for such a determination shall be treated as a final determination on an appeal of a denial of a claim for benefits for purposes of proceeding to external review under section 503B.

(c) REQUIREMENTS OF NOTICE.—With respect to a determination made under this subsection, the notice described in subparagraph (A) shall include—

(i) the reasons for the determination (including a summary of the clinical or scientific-evidence based rationale used in making the determination and instruction on obtaining a more complete description written in a manner to be calculated to be understood by the average participant);

(ii) the procedures for obtaining additional information concerning the determination; and

(iii) notification of the right to an independent external review under section 505B and instructions on how to initiate such a review.

(d) DEFINITIONS.—The definitions contained in section 505B(i) shall apply for purposes of this section.
waives the internal appeals process with respect to the denial of a claim for benefits involved under section 503A(b)(1)(D).

(C) PROCESS FOR MAKING DETERMINATIONS.—

(1) NO DEFERENCE TO PRIOR DETERMINATIONS.—In making determinations under sub paragraph (A), there shall be no deference given to any determination made by the plan or issuer under section 503A or the recommendation of a treating health care professional (if any).

(2) NOTICE TO PARTICIPANT OR BENEFICIARY.—(A) IN GENERAL.—If the plan or issuer, in its determination, determines that the denial of a claim for benefits is eligible for an independent medical review, the entity shall provide notice to the plan or issuer, the participant or beneficiary or an authorized representative of the opportunity to request independent medical review. The notice shall be provided orally in a manner calculated to be understood by an average participant; and (B) WRITTEN NOTICE.—Such notice shall be provided in writing in a manner calculated to be understood by an average participant.

(3) GENERAL TIMELINE FOR DETERMINATIONS.—

(A) IN GENERAL.—If a qualified external reviewer makes a determination that is the subject of the denial is covered under the terms and conditions of the plan or coverage, and (B) STANDARD FOR DETERMINATION.—The independent medical reviewer's determination relating to the medical necessity and appropriateness of the treatment or investigational nature, or the evaluation of the medical facts of the item, service, or condition shall be based on the condition of the participant or beneficiary (including the medical records of the participant or beneficiary) and the valid, relevant scientific evidence, including peer-reviewed medical literature or findings and including expert consensus.

(4) EVIDENCE INFORMATION TO BE USED IN MEDICAL REVIEWS.—In making a determination under this subsection, the independent medical reviewer shall consider appropriate and available evidence and information, including—

(A) THE DETERMINATION MADE BY THE PLAN OR ISSUER.—(i) The determination made by the plan or issuer with respect to the claim upon internal review and the evidence or guidelines used by the plan or issuer in reaching such determination.

(B) INDEPENDENT DETERMINATION.—(i) The determination made by the independent medical reviewer with respect to the claim upon independent medical review and the evidence or guidelines used by the independent medical reviewer in reaching such determination.

(C) The recommendation of the treating health care professional and the evidence, guidelines, and rationale used by the treating health care professional in reaching such recommendation.

(D) The plan or coverage document.

(E) INDEPENDENT DETERMINATION.—In making the determination, the independent medical reviewer shall—

(i) consider the claim under review without deference to the determinations made by the plan or issuer under section 503A or the recommendations the treating health care professional (if any); and

(ii) consider, but not be bound by the definition used by the plan or issuer of ‘medically necessary’ or ‘medically appropriate’, or by other similar terms that are used by the plan or issuer to describe medical necessity and appropriateness or experimental or investigational nature of the treatment.

(F) DETERMINATION OF INDEPENDENT MEDICAL REVIEWER.—An independent medical reviewer shall make a determination on the basis of the medical facts described in subsection (e), a written determination to uphold or reverse the denial under review and, in the case of a denial determined upon which the plan or issuer shall authorize coverage to comply with the determination. Such written determination shall include the specific reasoning of the determination, including a summary of the clinical or scientific-evidence based rationale used in making the determination. The reviewer may provide the plan or issuer and the treating health care professional with additional recommendations in connection with such a determination, but such recommendations shall not be treated as part of the determination.

(5) TIMELINES AND NOTIFICATIONS.—

(A) TIMELINES FOR INDEPENDENT MEDICAL REVIEW.—

(i) IN GENERAL.—The independent medical reviewer (or reviewers) shall make a determination on a denial of a claim for benefits no later than 30 days after the receipt of information under section (c)(3) not later than 14 business days after the receipt of information under subsection (c)(2) if the review involves a prior authorization of items or services, and (ii) EXPEDITED DETERMINATION.—Notwithstanding clause (i), the independent medical reviewer (or reviewers) shall make an expedited determination on the review not later than 72 hours after the receipt of information under subsection (c)(2).

(B) RETROSPECTIVE DETERMINATION.—The independent medical reviewer (or reviewers) shall complete a review in the case of a retrospective determination on an appeal of a denial of a claim for benefits that is referred to the reviewer under subsection (c)(3) not later than 24 hours after the receipt of information under subsection (c)(2) if the review involves a prior authorization of items or services, and (C) FORM OF NOTICES.—Determiations and notices under this subsection shall be in writing in a manner calculated to be understood by an average participant.

(6) TERMINATION OF EXTERNAL REVIEW PROCESS IF APPROVAL OF A CLAIM FOR BENEFITS IS SUBMITTED DURING PROCESS.—

(A) IN GENERAL.—If a plan or issuer—

(i) reverses a determination on a denial of a claim for benefits that is the subject of an external review under this section and authorizes coverage for the claim or provides payment of the claim; and

(ii) provides notice of such reversal to the participant or beneficiary (or authorized representative) and the treating health care professional (if any), and the external review entity responsible for such review.

(B) EXTERNAL REVIEW PROCESS TERMINATED.—If the determination is made under paragraph (a) of subsection (c) of section 503A entitled, but any such determination will be terminated with respect to such denial and any filing fee paid under subsection (a)(2)(A) or (B) shall be refunded.

(C) TERMINATION OF DETERMINATION.—An authorization of coverage under subparagraph (A) by the plan or issuer shall be treated as
a written determination to reverse a denial under section (d)(3)(F) for purposes of liability under section 502(a)(1)(B).

(1) COMPLIANCE WITH DETERMINATION.—

(A) EXTERNAL REVIEW DETERMINATIONS BINDING ON PLAN.—The determinations of an external review entity and an independent medical reviewer under this section shall be binding upon the plan or issuer involved.

(B) COMPLIANCE WITH DETERMINATION.—If the denial is independent, the independent medical reviewer is to reverse the denial, the plan or issuer, upon the receipt of such determination, shall authorize coverage to comply with the determination in accordance with the time frame established by the medical reviewer under subsection (d)(3)(F).

(2) FAILURE TO COMPLY.—If a plan or issuer fails to comply with the timeframe established under paragraph (1) with respect to a participant or beneficiary, where such failure to comply is caused by the plan or issuer, the participant or beneficiary may obtain items or services involved in a manner consistent with the determination of the independent medical reviewer.

(3) REIMBURSEMENT.—

(A) IN GENERAL.—Where a participant or beneficiary obtains items or services in accordance with paragraph (2), the plan or issuer involved shall provide for reimbursement of the costs of such items or services. Such reimbursement shall be made to the treating health care professional or to the participant or beneficiary (in the case of a treating health care professional) or to the medical reviewer in accordance with the time frame established by the medical reviewer under subsection (d)(3)(F).

(B) FAILURE TO REIMBURSE.—Where a plan or issuer fails to provide reimbursement to a professional, participant or beneficiary in accordance with paragraph (A), the plan or issuer involved shall fully reimburse a professional, participant or beneficiary under subparagraph (A) for the total costs of the items or services provided (regardless of any plan limitations that may apply to the coverage of such items or services) so long as—

(i) the items or services were covered under the terms of the plan or coverage if provided by the plan or issuer; and

(ii) the items or services were provided in a manner consistent with the determination of the independent medical reviewer.

(4) FAILURE TO REIMBURSE.—

(A) IN GENERAL.—In referring a denial to the independent medical reviewer, if the plan or issuer determines that a denial is consistent with independent medical reviewer, it shall be made only by a physician for such independent medical reviewer.

(B) INDEPENDENCE.—

(A) In cases subject to subparagraph (B), each independent medical reviewer in a case shall—

(i) not be a related party (as defined in paragraph (7));

(ii) not have a material familial, financial, or professional relationship with such a party; and

(iii) not otherwise have a conflict of interest with such a party (as determined under regulations).

(C) AMOUNT.—The plan or issuer shall provide for reimbursement of the costs of such items or services in accordance with the timeframe established under paragraph (1)(B) with respect to a reviewer in a same field.

(D) COMPLIANCE WITH DETERMINATION.—If the determination made by the independent medical reviewer is that the denial is consistent with the determination of the independent medical reviewer, the plan or issuer shall provide for reimbursement of the costs of such items or services in accordance with the timeframe established under paragraph (1)(B). The plan or issuer involved shall provide for reimbursement of the costs of such items or services in accordance with the timeframe established by the medical reviewer under subsection (d)(3)(F).

(5) A GE-APPROPRIATE EXPERTISE.—The health care professional that provides coverage under section 502(n)(1)(B). Each independent medical reviewer selected under this subparagraph shall comply with provisions of this section.

(6) LIMITATIONS ON REVIEWER COMPENSATION.—Compensation provided by a qualified external review entity to an independent medical reviewer in connection with a review under this section shall—

(A) not exceed a reasonable level; and

(B) not be contingent on the decision rendered by the reviewer.

(7) QUALIFIED EXTERNAL REVIEW ENTITIES.—For purposes of this section, the term ‘related party’ means, with respect to a plan under a contract or arrangement with a qualified external review entity, any of the following:

(A) The plan, plan sponsor, or issuer involved, or any fiduciary, officer, director, or employee of such plan, plan sponsor, or issuer.

(B) The participant or beneficiary (or authorized representative).

(C) The health care professional that provides the items of services involved in the denial.

(D) The institution at which the items or services (or treatment) involved in the denial are provided.

(E) The manufacturer of any drug or other item that is included in the items or services involved in the denial.

(F) Any other party determined under regulations to have a substantial interest in the denial involved.

(g) QUALIFICATIONS OF INDEPENDENT MEDICAL REVIEWERS.—

(1) IN GENERAL.—In referring a denial to 1 or more qualified external review entities for health insurance issuers.—With respect to health insurance issuers offering health insurance coverage in a State, the State may provide for the designation or selection of qualified external review entities in a manner consistent with the State assurance that the selection process among qualified external review entities will not create any incentives for external review entities to make a decision in a biased manner.

(B) STATE AUTHORITY WITH RESPECT TO QUALIFIED EXTERNAL REVIEW ENTITIES FOR HEALTH INSURANCE ISSUERS.—With respect to health insurance issuers offering health insurance coverage in a State, the State may provide for the designation or selection of qualified external review entities in a manner consistent with the State assurance that the selection process among qualified external review entities will not create any incentives for external review entities to make a decision in a biased manner.

(2) CONTRACT WITH QUALIFIED EXTERNAL REVIEW ENTITY.—Except as provided in paragraph (3), the external review process of a plan or issuer under this section shall comply with provisions of this section.

(3) TERMS AND CONDITIONS OF CONTRACT.—The terms and conditions of a contract under paragraph (2) shall—

(A) be consistent with the standards the Secretary shall establish to assure there is no real or apparent conflict of interest in the conduct of external review activities;

(B) provide that the costs of the external review process shall be borne by the plan or issuer.

Subparagraph (B) shall not be construed as applying to the imposition of a filing fee under subsection (b)(2)(A)(iv) or costs incurred by the participant or beneficiary (or authorized representative) or treating health care professional (if any) in support of the review, including the provision of additional evidence or information.

(h) QUALIFICATIONS.—In this section, the term ‘qualified external review entity’ means, in relation to a plan or issuer, an entity that is
initially certified (and periodically re- certified) under subparagraph (C) as meeting the following requirements:

(i) The entity has (directly or through contractual arrangements) sufficient medical, legal, and other expertise and sufficient staffing to carry out duties of a qualified external review entity under this section on a timely basis, including making determinations under subsection (b)(2)(A) and providing for independent medical reviews under subsection (d).

(ii) The entity is not a plan or issuer or an affiliate or a subsidiary of a plan or issuer, and is not an affiliate or subsidiary of a professional or trade association of plans or issuers or of health care providers.

(iii) The entity has provided assurances that it will conduct external review activities consistent with the independence requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

(iv) The entity has provided assurances that it will provide information in a timely manner under subparagraph (D).

(v) The entity meets such other requirements as the Secretary provides by regulation.

(B) INDEPENDENCE REQUIREMENTS.—

(I) IN GENERAL.—Subject to clause (ii), an entity meets the independence requirements of this subparagraph with respect to any case if the entity—

(a) is not a related party (as defined in subsection (g)(7));

(b) does not have a material familial, financial, or professional relationship with such a party; and

(c) does not otherwise have a conflict of interest with such a party (as determined under regulations).

(ii) EXCEPTION FOR REASONABLE COMPENSATION.—Nothing in clause (i) shall be construed to prohibit receipt by a qualified external review entity of compensation from a professional or trade association of plans or issuers or of health care providers.

(iii) INDEPENDENCE REQUIREMENTS.—In conducting recertifications of a qualified external review entity under this subparagraph, the Secretary or organization conducting the review compliance of the entity with the requirements for conducting external review activities under this section, including the following:

(A) Provision of information under subparagraph (D).

(B) Adherence to applicable deadlines (both by the medical reviewer and the independent medical reviewers it refers to cases).

(C) Compliance with limitations on compensation (with respect to both the entity and independent medical reviewers it refers to cases).

(D) Compliance with applicable independence requirements.

(E) PERIOD OF CERTIFICATION OR RECERTIFICATION.—A certification or recertification provided under this paragraph shall extend for a period not to exceed 5 years.

(F) REVOCATION.—A certification or recertification under this paragraph may be revoked by the Secretary or by the organization providing such certification upon a showing of cause.

(G) INFORMATION TO BE INCLUDED.—The information described in clause (ii) shall but not include individually identifiable medical information.

(H) INFORMATION TO BE INCLUDED.—The information described in this subclause with respect to an entity is as follows:

(I) The number and types of denials for which a request for review has been received by the entity.

(J) The disposition by the entity of such denials, including the number referred to an independent medical reviewer and the reasons for such dispositions (including the application of exclusions), on a plan or issuer-specific basis and on a health care specialty-specific basis.

(K) The length of time in making determinations with respect to such denials.

(L) Updated information on the information required to be submitted as a condition of certification with respect to the entity's performance of external review activities.

(M) INFORMATION TO BE PROVIDED TO CERTIFYING ORGANIZATION.—

(I) IN GENERAL.—In the case of a qualified external review entity which is certified (or recertified) under this subsection by a qualified external review organization, at the request of the organization, the entity shall provide the organization with the information provided to the Secretary under clause (i).

(II) ADDITIONAL INFORMATION.—Nothing in this subparagraph shall be construed as preventing or requiring the submission of additional information as a condition of certification or recertification of an entity.

(III) USE OF INFORMATION.—

(A) IN GENERAL.—Information provided under this subparagraph may be used by the Secretary and qualified private standard-setting organizations to conduct oversight of qualified external review entities, including recertification of such entities, and shall be made available to the public in an appropriate manner.

(B) REPORT TO CONGRESS.—Not later than 2 years after the date on which the Bipartisan Patients' Bill of Rights Act of 2001 takes effect under section 501 of such Act, and every 2 years thereafter, the Secretary, in consultation with the Secretary of Health and Human Services, shall prepare and submit to the appropriate committees of Congress, a report that contains—

(aa) a summary of the information provided to the Secretary under clause (ii);

(bb) a description of the effect that the process established pursuant to this section and section 505A had on the access of individuals to health insurance and health care;

(cc) a description of the effect on health care costs associated with the implementation of the appeals process described in item (bb) above;

(dd) a description of the quality and consistency of determinations by qualified external review entities.

(C) RECOMMENDATIONS.—The Secretary may, from time to time, submit recommendations to Congress with respect to proposed modifications to the appeals process based on the reports submitted under subclause (II).

(E) LIMITATION ON LIABILITY.—No qualified external review entity having a contract with a plan or issuer, and no person who is employed by any such entity or who furnishes professional services to such entity (including as an independent medical reviewer), shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this section, to be civilly liable under any law of the United States (or of any State, political subdivision thereof) if there was no actual malice or gross misconduct in the performance of such duty, function, or activity.

(I) DEFINITIONS.—In this section:

(A) AUTHORIZED REPRESENTATIVE.—The term 'authorized representative' means, with respect to a participant or beneficiary—

(a) a person to whom a participant or beneficiary has given express written consent to represent the participant or beneficiary in any proceeding under this section; and

(b) a person authorized by law to provide substituted consent for the participant or beneficiary; or

(C) a family member of the participant or beneficiary (or the estate of the participant or beneficiary) who is providing the beneficiary's treating health care professional when the participant or beneficiary is unable to provide consent.

(B) CLAIM FOR BENEFITS.—The term 'claim for benefits' means any request by a participant or beneficiary (or authorized representative) for benefits (including requests that are subject to arbitration or utilization review), for eligibility, or for payment in whole or in part, for an item or service under a group health plan or health insurance coverage issued in connection with a group health plan.

(C) CERTIFICATION.—A certification or recertification of an entity shall provide the organization with the information required to be submitted as a condition of certification or recertification of such entities, and shall be made available to the public in an appropriate manner.

(II) REPORT TO CONGRESS.—Not later than 2 years after the date on which the Bipartisan Patients' Bill of Rights Act of 2001 takes effect under section 501 of such Act, and every 2 years thereafter, the Secretary, in consultation with the Secretary of Health and Human Services, shall prepare and submit to the appropriate committees of Congress, a report that contains—

(aa) a summary of the information provided to the Secretary under clause (ii);

(bb) a description of the effect that the process established pursuant to this section and section 505A had on the access of individuals to health insurance and health care;

(cc) a description of the effect on health care costs associated with the implementation of the appeals process described in item (bb) above;

(dd) a description of the quality and consistency of determinations by qualified external review entities.

(E) RECOMMENDATIONS.—The Secretary may, from time to time, submit recommendations to Congress with respect to proposed modifications to the appeals process based on the reports submitted under subclause (II).

(E) LIMITATION ON LIABILITY.—No qualified external review entity having a contract with a plan or issuer, and no person who is employed by any such entity or who furnishes professional services to such entity (including as an independent medical reviewer), shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this section, to be civilly liable under any law of the United States (or of any State, political subdivision thereof) if there was no actual malice or gross misconduct in the performance of such duty, function, or activity.

(I) DEFINITIONS.—In this section:

(A) AUTHORIZED REPRESENTATIVE.—The term 'authorized representative' means, with respect to a participant or beneficiary—

(a) a person to whom a participant or beneficiary has given express written consent to represent the participant or beneficiary in any proceeding under this section; and

(b) a person authorized by law to provide substituted consent for the participant or beneficiary; or

(C) a family member of the participant or beneficiary (or the estate of the participant or beneficiary) who is providing the beneficiary's treating health care professional when the participant or beneficiary is unable to provide consent.

(B) CLAIM FOR BENEFITS.—The term 'claim for benefits' means any request by a participant or beneficiary (or authorized representative) for benefits (including requests that are subject to arbitration or utilization review), for eligibility, or for payment in whole or in part, for an item or service under a group health plan or health insurance coverage issued in connection with a group health plan.

(C) CERTIFICATION.—A certification or recertification of an entity shall provide the organization with the information required to be submitted as a condition of certification or recertification of such entities, and shall be made available to the public in an appropriate manner.

(II) REPORT TO CONGRESS.—Not later than 2 years after the date on which the Bipartisan Patients' Bill of Rights Act of 2001 takes effect under section 501 of such Act, and every 2 years thereafter, the Secretary, in consultation with the Secretary of Health and Human Services, shall prepare and submit to the appropriate committees of Congress, a report that contains—

(aa) a summary of the information provided to the Secretary under clause (ii);

(bb) a description of the effect that the process established pursuant to this section and section 505A had on the access of individuals to health insurance and health care;

(cc) a description of the effect on health care costs associated with the implementation of the appeals process described in item (bb) above;

(dd) a description of the quality and consistency of determinations by qualified external review entities.

(E) RECOMMENDATIONS.—The Secretary may, from time to time, submit recommendations to Congress with respect to proposed modifications to the appeals process based on the reports submitted under subclause (II).

(E) LIMITATION ON LIABILITY.—No qualified external review entity having a contract with a plan or issuer, and no person who is employed by any such entity or who furnishes professional services to such entity (including as an independent medical reviewer), shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this section, to be civilly liable under any law of the United States (or of any State, political subdivision thereof) if there was no actual malice or gross misconduct in the performance of such duty, function, or activity.

(I) DEFINITIONS.—In this section:

(A) AUTHORIZED REPRESENTATIVE.—The term 'authorized representative' means, with respect to a participant or beneficiary—

(a) a person to whom a participant or beneficiary has given express written consent to represent the participant or beneficiary in any proceeding under this section; and

(b) a person authorized by law to provide substituted consent for the participant or beneficiary; or

(C) a family member of the participant or beneficiary (or the estate of the participant or beneficiary) who is providing the beneficiary's treating health care professional when the participant or beneficiary is unable to provide consent.

(B) CLAIM FOR BENEFITS.—The term 'claim for benefits' means any request by a participant or beneficiary (or authorized representative) for benefits (including requests that are subject to arbitration or utilization review), for eligibility, or for payment in whole or in part, for an item or service under a group health plan or health insurance coverage issued in connection with a group health plan.
“(3) GROUP HEALTH PLAN.—The term ‘group health plan’ shall have the meaning given such term in section 733(a). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

“(4) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ has the meaning given such term in section 733(b)(1). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

“(5) PRIOR AUTHORIZATION DETERMINATIONS.—The term ‘prior authorization determination’ means a determination by the group health plan or health insurance issuer offering health insurance coverage in connection with a group health plan or health insurance coverage means as procedures to evaluate the medical necessity, appropriateness, efficacy, quality, or efficiency of items, services, or settings, and includes prospective review, concurrent review, second opinions, case management, discharge planning, or retrospective review.

“(b) CONFORMING AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended by adding at the end the following:

“Sec. 503A. Claims and internal appeals procedures for group health plans.

Sec. 503B. Independent external review procedures for group health plans.”

SEC. 132. ENFORCEMENT.

Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended by adding at the end the following:

“(8) UTILIZATION REVIEW.—The term ‘utilization review’ with respect to a group health plan or health insurance coverage means procedures used in the determination of coverage for a participant or beneficiary, such as procedures to evaluate the medical necessity, appropriateness, efficacy, quality, or efficiency of items, services, or settings, and includes prospective review, concurrent review, second opinions, case management, discharge planning, or retrospective review.

“(b) CONFORMING AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 503 the following:

“Sec. 503A. Claims and internal appeals procedures for group health plans.

Sec. 503B. Independent external review procedures for group health plans.”

SEC. 141. AVAILABILITY OF COURT REMEDIES.

(a) In General.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

“(d) CAUSE OF ACTION RELATING TO DENIAL OF A CLAIM FOR HEALTH BENEFITS.—

“(1) In general.—

“(A) FAILURE TO COMPLY WITH EXTERNAL MEDICAL REVIEW.—With respect to an action commenced by a participant or beneficiary or the estate of the participant or beneficiary, in connection with a group health plan or health insurance coverage means procedures used in the determination of coverage for a participant or beneficiary, such as procedures to evaluate the medical necessity, appropriateness, efficacy, quality, or efficiency of items, services, or settings, and includes prospective review, concurrent review, second opinions, case management, discharge planning, or retrospective review.

“(b) CONFORMING AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 503 the following:

“Sec. 503A. Claims and internal appeals procedures for group health plans.

Sec. 503B. Independent external review procedures for group health plans.”

Subtitle D—Remedies

SEC. 142. REMEDIES AND ENFORCEMENT.

(a) In General.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

“(d) CAUSE OF ACTION RELATING TO DENIAL OF A CLAIM FOR HEALTH BENEFITS.—

“(1) In general.—

“(A) FAILURE TO COMPLY WITH EXTERNAL MEDICAL REVIEW.—With respect to an action commenced by a participant or beneficiary or the estate of the participant or beneficiary, in connection with a group health plan or health insurance coverage means procedures used in the determination of coverage for a participant or beneficiary, such as procedures to evaluate the medical necessity, appropriateness, efficacy, quality, or efficiency of items, services, or settings, and includes prospective review, concurrent review, second opinions, case management, discharge planning, or retrospective review.

“(b) CONFORMING AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 503 the following:

“Sec. 503A. Claims and internal appeals procedures for group health plans.

Sec. 503B. Independent external review procedures for group health plans.”

SEC. 143. REQUIREMENT TO PROVIDE NOTICE OF DECISION ON REVIEW.

Section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

“(c) Notice.—A claimant shall have the right to receive notice of the decision of the designated decisionmaker in accordance with this subsection. The notice shall—

“(1) state the specific reasons for the denial of the claim for benefits; and

“(2) state the specific facts and circumstances on which the denial was based.

“(d) RIGHT TO AMEND CLAIM.—A claimant has the right to amend a claim for benefits with respect to which a denial of benefits has been made under section 502(a) if—

“(1) the claimant has not previously amended the claim; and

“(2) the amendment provides a reasonable basis for additional consideration of the claim.

“(e) RIGHT TO TREATMENT UNDER STATE LAW.—If a claim is denied under section 502(a) and the claimant objects to the decision of the designated decisionmaker, the claimant may pursue the claim under State law as provided in section 502(a).
"(1) IN GENERAL.—Subject to clause (ii), an entity is qualified under this subparagraph to serve as a designated decisionmaker with respect to a group health plan if the entity has assumed the liabilities and responsibilities described in subparagraph (A) with respect to participants and beneficiaries under such plan, including requirements relating to the financial and legal control in making such decisions, and maintains the plan sponsor and the Secretary certification of such ability. Such certification shall be provided by the plan sponsor or named fiduciary and to the Secretary upon designation under paragraph (1)(C) or section 514(c)(3)(B) and not less frequently than annually thereafter.

(2) CERTAIN REVIEWABLE DECISIONS.—In the case of a group health plan that provides benefits consisting of medical care to a participant or beneficiary only through health insurance coverage offered by a single health insurance issuer, such issuer is the only entity that may be qualified under this subparagraph to serve as a designated decisionmaker with respect to such participant or beneficiary under subparagraph (A) and shall serve as the designated decisionmaker unless the employer or other plan sponsor acts affirmatively to prevent such service.

(3) RELATING TO FINANCIAL OBLIGATIONS.—For purposes of subparagraph (B)(ii), the requirements relating to the financial obligation of an entity for liability shall include—

(i) coverage under an insurance policy or other arrangement, secured and maintained by such entity, to effectively insure such entity against losses arising from professional liability claims, including those arising from its service as a designated decisionmaker under this paragraph; and

(ii) any minimum capital and surplus levels that are maintained by such entity to cover any losses as a result of liability arising from its service as a designated decisionmaker under this paragraph.

The appropriate amounts of liability insurance and minimum capital and surplus levels for purposes of clauses (i) and (ii) shall be determined by an actuary using sound actuarial principles and accounting practices pursuant to established guidelines of the American Academy of Actuaries and in accordance with regulations as the Secretary may prescribe and shall be maintained throughout the term for which the designation is in effect.

(4) REQUIREMENT OF EXHAUSTION OF ADMINISTRATIVE PROCESSES.—Receipt by the participant or beneficiary, unless the requirements of this subparagraph are met, of such relief as the court would have awarded under paragraphs (1), (2), or (3) of section 502(a)(1) of title 29 before the date on which such time period has expired and the filing of such action shall not affect the duty of the independent medical reviewer to make a determination within the time required under section 503B, a participant or beneficiary may bring an action under section 514(d) after 10 additional days after the date on which such time period has expired.

(5) LIMITATIONS ON RECOVERY OF DAMAGES.—(A) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—The aggregate amount of liability for noneconomic loss in an action under paragraph (1) may not exceed the greater of—

(i) $500,000; or

(ii) an amount equal to 3 times the amount awarded for economic loss.
"(B) INCREASE IN AMOUNT.—The amount referred to in subparagraph (A)(ii) shall be increased or decreased, for each calendar year that ends after December 31, 2002, by the same applicable percentage by which the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, for September of the preceding calendar year has increased or decreased from the such Index for September of 2002.

"(C) SEVERAL LIABILITY.—In the case of any action commenced pursuant to paragraph (1), the designated decision-maker shall be liable only for the amount of non-economic damages attributable to such designated decision-maker in direct proportion to such decision-maker's share of fault or responsibility for the injury suffered by the participant or beneficiary. In all such cases, the liability of a designated decision-maker for noneconomic damages shall be several and not joint.

"(D) TREATMENT OF COLLATERAL SOURCE PAYMENTS.—"(i) IN GENERAL.—In the case of any action commenced pursuant to paragraph (1), the total amount of damages received by a participant or beneficiary under such action shall be reduced by an amount (but not less than (ii)) by any other payment that has been, or will be, made to such participant or beneficiary pursuant to an order or judgment of another court, to compensate such participant or beneficiary for the injury that was the subject of such action.

"(ii) AMOUNT OF REDUCTION.—The amount by which an award of damages to a participant or beneficiary for an injury shall be reduced under clause (i) shall be—

"(I) the total amount of any payments (other than such award) that have been made or that will be made to such participant or beneficiary to pay costs of or compensate such participant or beneficiary for the injury that was the subject of the action; less

"(II) the amount paid by such participant or beneficiary (or by the spouse, parent, or legal guardian of such participant or beneficiary) to secure the payments described in subsection (c).

"(iii) DETERMINATION OF AMOUNTS FROM COLLATERAL SOURCE PAYMENTS.—Section 502 of the Federal Arbitration Act (9 U.S.C. 1001 et seq.) shall apply in determining the amount referred to in subparagraph (ii).

"(7) WAIVER OF INTERNAL REVIEW.—In the case of any cause of action under paragraph (1), the waiver or nonwaiver of internal review under section 503A by the group health plan, or health insurance issuer that offers health insurance coverage in connection with a group health plan, shall not be used in determining liability.

"(8) CLAIMS AGAINST A THIRD PARTY.—"(i) PROHIBITION.—Section 502 of the Federal Arbitration Act (9 U.S.C. 1001 et seq.) shall not apply in connection with any action or proceeding under this title to which a third party is a necessary and indispensable party.

"(ii) LIABILITY FOR THIRD PARTY CLAIMS.—"(A) IN GENERAL.—Except as provided in subparagraph (B), the term "liability" includes the duty to make a determination on a claim for benefits under section 503A denying a claim for benefits under the plan.

"(B) CLAIM FOR BENEFITS.—Except as provided for in paragraph (9), the term "claim for benefits" shall have the meaning given such term in section 503A, except that such term shall only include claims for which prior authorization is required.

"(9) PROTECTION OF REGULATORY AUTHORITY OF STATE LAW.—Nothing in this subsection shall be construed to preclude any action under State law against a person or entity for liability or compensation for harm that is the subject of the action; and

"(10) CONSTRUCTION.—Nothing in this subsection shall be construed as limiting the authority of the State to impose civil penalties for failure to provide a plan benefit not eligible for medical review.

"(11) PREVIOUSLY PROVIDED SERVICES.—"(a) AUTHORIZED REPRESENTATIVE.—The term "authorized representative" has the meaning given such term in section 733(a).

"(b) AUTHORIZED REPRESENTATIVE.—"(i) prohibit a cause of action under paragraph (1) where the denial involved relates to an item or service that was the subject of the action; less

"(ii) failed to notify the plan or issuer of the denial of coverage under section 503B, or a time period of time elapsing after coverage was denied that is consistent with the timelines applicable under section 503B.

"(12) EXEMPTION FROM PERSONAL LIABILITY.—"(A) A claim that is based on a denial of coverage under section 503B and such determination is not subject to independent medical review as determined at the end of the following:

"(i) prohibit a cause of action under paragraph (1) where the nonpayment involved results in the participant or beneficiary being unable to obtain the item or service that was the subject of the denial of coverage under section 503B.

"(ii) prohibit a cause of action under paragraph (1) relating to quality of care; or

"(iii) limit liability that otherwise would arise under section 503B for errors or omissions in the performance of a medical procedure.

"(13) DEFINITIONS.—In this subsection:

"(A) AUTHORIZED REPRESENTATIVE.—The term "authorized representative" has the meaning given such term in paragraph (11).

"(B) CLAIM FOR BENEFITS.—The term "claim for benefits" has the meaning given such term in section 733(a). In applying this paragraph, excepted benefits described in section 733(c) shall not be treated as benefits consisting of medical care.

"(C) GROUP HEALTH PLAN.—The term "group health plan" shall have the meaning given such term in section 733(b)(2).

"(D) PROOF OF LIABILITY.—"(i) prohibit a cause of action under paragraph (1) where the denial of coverage under section 503B involved relates to an item or service that was the subject of the action; less

"(ii) failed to notify the plan or issuer of the denial of coverage under section 503B, or a time period of time elapsing after coverage was denied that is consistent with the timelines applicable under section 503B.

"(E) AUTHORITY TO IMPOSE CIVIL PENALTIES FOR FAILURE TO PROVIDE A PLAN BENEFIT NOT ELIGIBLE FOR MEDICAL REVIEW.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by subsection (a), is further amended by adding at the end the following:

"(F) AUTHORITY TO IMPOSE CIVIL PENALTIES FOR FAILURE TO PROVIDE A PLAN BENEFIT NOT ELIGIBLE FOR MEDICAL REVIEW.—In connection with any action maintained under subsection (a)(1)(B), the court, in its discretion, may assess a civil penalty against the designated decision-maker (as designated pursuant to section 502(n)(2)(G) of a group health plan or a health insurance issuer that offers health insurance coverage in connection with a group health plan) of not to exceed $100,000 where—

"(1) in its final determination under section 503B, the designated decision-maker fails to provide, or authorize coverage of, a benefit to which a participant or beneficiary is entitled under the terms and conditions of the plan.

"(2) the participant or beneficiary has appealed such determination under section 505B and such determination is not subject to independent medical review as determined by a qualified external review entity under section 505B;

"(3) the plan has failed to exercise ordinary care in making a determination under section 503A denying a claim for benefits under the plan; and
“(4) that denial is the proximate cause of substantial harm (as described in subsection (n)(10)(G)) the participant or beneficiary.”.

(c) LIMITATION ON CERTAIN CLASS ACTION LITIGATION.—

(1) ERISA.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132), as amended by subsections (a) and (c) is further amended by adding at the end the following:

““(p) LIMITATION ON CLASS ACTION LITIGATION.—

“(1) CLAIMS UNDER THIS SECTION.—

“(A) IN GENERAL.—Any claim or cause of action that is maintained under this section in connection with a group health plan, or health insurance coverage issued in connection with a group health plan, as a class action, derivative action, or as an action on behalf of any group of 2 or more claimants, may be maintained only if the class, the derivative claimant, or the group of claimants is limited to the participants or beneficiaries of a group health plan established by only 1 plan sponsor. No action maintained by such class, such derivative claimant, or such group of claimants may be joined in the same proceeding with any action maintained by an exclusive claimant or a group of claimants or consolidated for any purpose with any other proceeding. In this paragraph, the terms ‘group health plan’ and ‘health insurance coverage’ have the meanings given such terms in section 733.

“(B) EFFECTIVE DATE.—This paragraph shall apply to all civil actions that are filed on or after the date of enactment of the Patient Protection and Affordable Care Act and all actions commenced on or after the date of enactment of the Bi partisan Patient Protection Act. This paragraph shall apply to civil actions that are pending and have not been finally determined by judgment or settlement prior to the date such enactment.

“(2) NO APPLICATION OF RICO.—

“(A) Any action that seeks relief under 1964(c) of title 18, United States Code, concerning the manner in which any person has marketed, provided information concerning, established, administered, or otherwise operated a group health plan, or health insurance coverage in connection with a group health plan. Any such action shall only be brought under the Employee Retirement Income Security Act of 1974. In this paragraph, the terms ‘group health plan’ and ‘health insurance issuer’ shall have the meanings given such terms in section 733 of the Employee Retirement Income Security Act of 1974.

“(B) EFFECTIVE DATE.—Subparagraph (A) shall apply to all civil actions that are pending and have not been finally determined by judgment or settlement prior to the date of enactment of the Bipartisan Patient Protection Act and all actions commenced on or after such date.”.

(d) CONFORMING AMENDMENT.—Section 502(a)(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)(1)(A)) is amended by inserting “or (n)” after “subsection (c)”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to facts occurring on or after October 1, 2002.

Subtitle E—State Flexibility

SEC. 151. PREEMPTION; STATE FLEXIBILITY; CONSENT TO SERVICE OF PROCESS.

(a) LIMITATION ON PREEMPTION OF STATE LAW WITH RESPECT TO HEALTH INSURANCE ISSUERS.—

(1) IN GENERAL.—Subject to paragraph (2)—

(A) subtitles A and B of section 1132(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)(1)) are repealed, and

(B) the requirements made by subtitle C shall not be construed to supersede any provision of State law which establishes, implements, or continues an standard or requirement solely relating to health insurance issuers (in connection with group health plans or individual health insurance coverage) and to non-Federal governmental plans except to the extent that such standard or requirement prevents the application of a requirement of such Act.

(2) LIMITATION.—In the case of a group health plan covered under title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1100 et seq.) (other than a plan established by only 1 plan sponsor), paragraph (1) shall not apply only with respect to the health insurance coverage (if any) offered in connection with the plan on or after May 1, 2002.

(b) CONSENT TO SERVICE OF PROCESS.—

(A) IN GENERAL.—The Board shall promptly review a certification submitted under paragraph (1) with respect to a State law to make the determination described in paragraph (3).

(B) APPROVAL DEADLINES.—

(I) INITIAL REVIEW.—Not later than 60 days after the date on which the Board receives a certification under paragraph (1), the Board shall—

(I) notify the State that specified additional information is needed to make the determination described in paragraph (3); or

(II) submit a recommendation to the Secretary concerning the approval or disapproval (and the reasons therefor) of the certification.

(II) ADDITIONAL INFORMATION.—With respect to a State that has been notified by the Board under clause (i)(I) that specified additional information is needed to make the determination described in paragraph (3), the Board shall include as a condition of the adoption by the Board of the certification described in paragraph (3) the submission of additional information by the State requested by the Board.

(c) DETERMINATIONS WITH RESPECT TO CERTIFICATION.—

(1) IN GENERAL.—For purposes of the continued application of certain State laws under subsection (b)(1), a State may, on or after May 1, 2002, submit to the Board established under subsection (d) a certification that the State law involved is consistent with those patient protection requirements (as defined in subsection (b)(3)) that are covered by the law for which the State is seeking certification. Such certification shall be accompanied by such additional information as may be required by the Board to make the determination described in paragraph (3), as applicable.

(2) ACTION BY BOARD.—

(A) IN GENERAL.—The Board shall promptly review a certification submitted under paragraph (1) with respect to a State law to make the determination described in paragraph (3).

(B) APPROVAL DEADLINES.—

(I) INITIAL REVIEW.—Not later than 60 days after the date on which the Board receives a certification under paragraph (1), the Board shall—

(I) notify the State involved that specified additional information is necessary to make the determination described in paragraph (3); or

(II) submit a recommendation to the Secretary concerning the approval or disapproval (and the reasons therefor) of the certification.

(II) ADDITIONAL INFORMATION.—With respect to a State that has been notified by the Board under clause (i)(I) that specified additional information is necessary to make the determination described in paragraph (3), the Board shall include as a condition of the adoption by the Board of the certification described in paragraph (3) the submission of additional information by the State requested by the Board.

(d) DETERMINATION.—The Board shall recommend that the Secretary approve or disapprove a certification submitted under paragraph (1). The Board shall—

(A) approve the certification submitted under paragraph (1) if the Board determines that the State law is consistent with the Act.

(B) DISAPPROVE THE CERTIFICATION.—The Board shall—

(A) disapprove the certification submitted under paragraph (1) if the Board determines that the State law is inconsistent with the Act.

(2) CONCLUSION.—The conclusion of the Board that a certification submitted under paragraph (1) shall be approved by the Secretary unless
(a) INCORPORATION OF GENERAL DEFINITIONS.—The provisions of section 2791 of the Public Health Service Act shall apply for purposes of this title in the same manner as they apply for purposes of title XXVII of such Act.

(b) SECRETARY.—Except as otherwise provided in this title, the Secretary shall be deemed to be references to the Secretary of Health and Human Services, in consultation with the Secretary of Labor.

(c) ADDITIONAL DEFINITIONS.—For purposes of this title:

(1) ENROLLEE.—The term “enrollee” means, with respect to health insurance coverage offered by a health insurance issuer, an individual enrolled with the issuer to receive such coverage.

(2) HEALTH CARE PROFESSIONAL.—The term “health care professional” means an individual who is licensed, accredited, or certified under State law to provide specified health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage, a health care provider that meets the definition of health care provider under paragraph (1), or a health care provider that is not a participating health care provider with respect to such items and services.

(b) CONFORMING AMENDMENT.—Section 2721(b)(2)(A) of such Act (42 U.S.C. 300gg–21(b)(2)(A)) is amended by inserting “other than section 2707” before “respect to each of such subparts”.

SEC. 202. APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.

Part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–41 et seq.) is amended—

(1) by redesignating the first subsection 3 (relating to other requirements) as subsection 2; and

(2) by inserting after section 2732 the following:
"SEC. 7253. PATIENT PROTECTION STANDARDS AND ACCOUNTABILITY."

"(a) IN GENERAL.—Each health insurance issuer offering health insurance coverage in connection with a group health plan shall comply with the requirements of title I of the Bipartisan Patients’ Bill of Rights Act of 2001 and each other requirement of title I of the Bipartisan Patients’ Bill of Rights Act of 2001."

"(b) ACCOUNTABILITY.—The provisions of sections 505 through 503B of the Employee Retirement Income Security Act of 1974 (as in effect as of the day after the date of enactment of this Act) that are otherwise applicable to such issuer shall apply to an issuer (or plan) under this section where—

"(1) the issuer (or plan) is in compliance with the patient protection requirements of the Bipartisan Patients’ Bill of Rights Act of 2001, and compliance with regulations promulgated by the Secretary under title I of the Patient Protection and Affordable Care Act of 2010 (as defined in section 151(b)(3) of such Act) that are otherwise applicable to such issuer (or plan) shall be deemed consistent with such agreement, exercise the powers of the Secretary under such title which relate to such authority."

"(b) PLAN SATISFACTION OF CERTAIN REQUIREMENTS.—(1) SATISFACTION OF CERTAIN REQUIREMENTS THROUGH INSURANCE.—For purposes of subsection (a), insofar as a group health plan provides benefits in the form of health insurance coverage through a health insurance issuer, the plan shall be treated as meeting the following requirements of title I of the Bipartisan Patients’ Bill of Rights Act of 2001 with respect to such issuer, if such issuer (and all that follows through the period and inserting ‘‘(a)’’ after ‘‘SEC. 503.’’; and

"(2) DELEGATIONS.—Any department, agency, or instrumentality of the Secretary of Health and Human Services may, if authorized under State law and to the extent consistent with such agreement, exercise the powers of the Secretary under such title which relate to such authority."

"(1) AGREEMENT WITH STATES.—A State may enter into an agreement with the Secretary for the delegation to the State of some or all of the Secretary’s authorities under this title to enforce the requirements applicable under title I of the Bipartisan Patients’ Bill of Rights Act of 2001 to health insurance issuers in connection with non-Federal governmental plans and individual health insurance coverage.

"(b) DELEGATIONS.—Any department, agency, or instrumentality of a State to which authority is delegated pursuant to an agreement entered into under this subsection may, if authorized under State law and to the extent consistent with such agreement, exercise the powers of the Secretary under such title which relate to such authority."
TITLE IV—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 401. APPLICATION TO GROUP HEALTH PLANS UNDER THE INTERNAL REVENUE CODE OF 1986

Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended—
1. in the table of sections, by inserting after the item relating to section 9812 the following new item:
   "Sec. 9813. Standard relating to patients’ bill of rights."
   and
2. by inserting after section 9812 the following:
   "Sec. 9813. STANDARD RELATING TO PATIENTS’ BILL OF RIGHTS.
   "A group health plan shall comply with the requirements of title I of the ‘Bipartisan Patients’ Bill of Rights Act of 2001’ (as in effect as of the date of the enactment of such Act), and such requirements shall be deemed to be incorporated into this section.’’

SEC. 402. CONFORMING ENFORCEMENT FOR WOMEN’S HEALTH AND CANCER RIGHTS

Subchapter B of chapter 100 of the Internal Revenue Code of 1986, as amended by section 401, is further amended—
1. in the table of sections, by inserting after the item relating to section 9813 the following new item:
   "Sec. 9814. Standard relating to women’s health and cancer rights."
   and
2. by inserting after section 9813 the following:
   "Sec. 9814. STANDARD RELATING TO WOMEN’S HEALTH AND CANCER RIGHTS.
   ‘‘The provisions of section 713 of the Employee Retirement Income Security Act of 1974 (as in effect as of the date of the enactment of this Act) shall apply to group health plans as if included in this subchapter.’’

TITLE V—EFFECTIVE DATE; SEVERABILITY

SEC. 501. EFFECTIVE DATE AND RELATED RULES.

Except as otherwise provided in this Act, the provisions of this Act, including the amendments made by title I, shall apply on the date of enactment of this Act, and the amendments made by this Act, the amendments made by this Act, or the amendments made by such section shall be deemed to be null and void and shall not be given force or effect.

SEC. 403. ANNUAL REVIEW.

(a) In General.—Not later than 24 months after the effective date referred to in section 402, the Secretary, in an ‘‘Enforcement Study of the Internal Revenue Code of 1986’’, and the amendments made by such section or amendments to any person or circumstance is held to be unconstitutional, the remainder of such section, and the amendments made by such section shall be deemed to be null and void and shall be given no force or effect.

(b) Limitation With Respect to Certain Plans.—If the Secretary, in any report submitted under subsection (a), determines that more than 1,000,000 individuals in the United States have lost their health insurance coverage as a result of the enactment of this Act, as compared to the number of individuals with health insurance coverage in the 12-month period preceding the date of enactment of this Act, section 141 and the amendments made by such section shall be repealed effective on the date that is 12 months after the date on which the report is submitted, and the submission of any further reports under subsection (a) is required.

(c) Funding.—From funds appropriated to the Department of Health and Human Services for fiscal years 2003 and 2004, the Secretary of Health and Human Services shall provide for such funding as the Secretary determines necessary for the conduct of the study of the National Academy of Sciences under this section.

SA 859. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 976, to provide authorization and funding for the enhancement of ecosystems, water supply, and water quality of the State of California; which was referred to the Committee on Energy and Natural Resources; as follows:

SEC. 859. Authorization and funding for enhancement of ecosystems, water supply, and water quality for the State of California.

(a) In General.—Not later than January 1, 2004, the Secretary of the Interior shall prepare a report to the Congress covering the following:
1. the results of all feasibility and operational studies carried out for the project;
2. the results of final environmental impact studies and reports completed concerning the project;
3. a finding of consistency with the record of decision by the University of California; and
4. a finding of conformity with the State of California; and
5. a finding of consistency with the review of the project by the Department of Energy and the Department of Interior.

(b) Limitation With Respect to Certain Plans.—If the Secretary, in any report submitted under subsection (a), determines that more than 1,000,000 individuals in the United States have lost their health insurance coverage as a result of the enactment of this Act, as compared to the number of individuals with health insurance coverage in the 12-month period preceding the date of enactment of this Act, section 141 and the amendments made by such section shall be repealed effective on the date that is 12 months after the date on which the report is submitted, and the submission of any further reports under subsection (a) is required.

(c) Funding.—From funds appropriated to the Department of Health and Human Services for fiscal years 2003 and 2004, the Secretary of Health and Human Services shall provide for such funding as the Secretary determines necessary for the conduct of the study of the National Academy of Sciences under this section.
clause, the Secretary shall immediately submit to the authorizing committees an explanation of the failure to submit the report that includes—

(I) a specified timeline for submission of the report; and

(II) if determined to be appropriate for inclusion by the Secretary—

(a) a partial interim report; or

(b) a determination by the Secretary that the project appears to be infeasible, based on preliminary findings and information contained in the report.

(E) Cost sharing.—

Beginning on page 30, strike line 9 and all that follows through page 32, line 18, and insert the following:

beginning page 30, line 9 and all that follows through page 32, line 18, and insert the following:

SEC. 304. SENSE OF THE SENATE CONCERNING THE IMPORTANCE OF CERTAIN UNPAID SERVICES.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the court should consider the loss of support or payment as an economic loss for the purposes of this section. Furthermore, the court should define the compensation for the loss of support or payment in such a manner as fully compensate for the true and whole replacement cost to the family.

At the end of subtitle A of title I, insert the following:

SEC. 305. HEALTH CARE CONSUMER ASSISTANCE FUND.

(a) Grants.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall establish a fund, to be known as the ‘‘Health Care Consumer Assistance Fund’’, to award grants to eligible States to carry out consumer assistance activities, including, but not limited to, activities that describe—

(A) the manner in which the State will ensure that health care consumer assistance office (established under paragraph (4)) will provide for the collection of non-Federal contributions for the operation of the office and reallocated in accordance with this subsection that are not used by the State shall be remitted to the Secretary. Any amounts provided to a State under this subsection that are not used by the State shall be remitted to the Secretary and reallocated in accordance with this subsection.

(b) Minimum amount.—In no case shall the amount provided to a State under this subsection for a fiscal year be less than an amount equal to 0.5 percent of the amount appropriated for such fiscal year to carry out this section.

(C) NON-FEDERAL CONTRIBUTIONS.—A State will provide for the collection of non-Federal contributions for the operation of the office in an amount that is not less than 25 percent of the amount of Federal funds provided to the State under this section.

(b) USE OF FUNDS.—

(A) BY STATE.—A State shall use amounts provided under a grant awarded under this section to carry out consumer assistance activities directly or by contract with an independent, nonprofit entity that has the technical, organizational, and professional capacity to deliver the services described in subsection (b) to all public and private health insurance participants, beneficiaries, enrollees, or prospective enrollees.

(C) EXISTING STATE ENTITY.—Nothing in this section shall prevent the funding of an existing health care consumer assistance program that otherwise meets the requirements of this section.

(b) BY STATE.—A State shall use amounts provided under a grant awarded under this section to carry out consumer assistance activities directly or by contract with an independent, nonprofit entity. An eligible entity may use some reasonable amount of such grant to ensure the adequate training of personnel carrying out such activities. To reduce amounts unobligated, an eligible entity shall provide consumer assistance services, including—

(A) the provision of education on effective methods to promptly and efficiently resolve problems, questions, and grievances; and

(B) the dissemination of appropriate educational materials on available health insurance products and on how best to access health care and the rights and responsibilities of health care consumers;

(C) the provision of education on effective methods to promptly and efficiently resolve problems, questions, and grievances; and

(D) the coordination of informational and outreach efforts with health plans, health care providers, payers, and governmental agencies and groups.

(E) the coordination of informational and outreach efforts with health plans, health care providers, payers, and governmental agencies and groups.

(F) the provision of information and assistance, including acting as an authorized representative, regarding internal, external, or administrative grievances or appeals procedures in nonlitigative settings to appeal the denial, termination, or reduction of health care services, or the refusal to pay for such services, under a group health plan or health insurance coverage offered by a health insurance issuer bears to the total number of individuals so covered in all States (as determined by the Secretary). Any amounts provided to a State under this subsection that are not used by the State shall be remitted to the Secretary and reallocated in accordance with this subsection.

(b) Minimum amount.—In no case shall the amount provided to a State under this subsection for a fiscal year be less than an amount equal to 0.5 percent of the amount appropriated for such fiscal year to carry out this section.

(C) Non-Federal Contributions.—A State will provide for the collection of non-Federal contributions for the operation of the office in an amount that is not less than 25 percent of the amount of Federal funds provided to the State under this section.

SEC. 306. HEALTH CARE CONSUMER ASSISTANCE ACT. 

(a) Grants.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ‘‘Secretary’’) shall establish a fund, to be known as the ‘‘Health Care Consumer Assistance Fund’’, to award grants to eligible States to carry out consumer assistance activities, including, but not limited to, activities that describe—

(A) the manner in which the State will provide for the collection of non-Federal contributions for the operation of the office and reallocated in accordance with this subsection that are not used by the State shall be remitted to the Secretary. Any amounts provided to a State under this subsection that are not used by the State shall be remitted to the Secretary and reallocated in accordance with this subsection.

(b) Minimum amount.—In no case shall the amount provided to a State under this subsection for a fiscal year be less than an amount equal to 0.5 percent of the amount appropriated for such fiscal year to carry out this section.

(C) Non-Federal Contributions.—A State will provide for the collection of non-Federal contributions for the operation of the office in an amount that is not less than 25 percent of the amount of Federal funds provided to the State under this section.

(b) USE OF FUNDS.—

(A) BY STATE.—A State shall use amounts provided under a grant awarded under this section to carry out consumer assistance activities directly or by contract with an independent, nonprofit entity. An eligible entity may use some reasonable amount of such grant to ensure the adequate training of personnel carrying out such activities. To reduce amounts unobligated, an eligible entity shall provide consumer assistance services, including—

(A) the provision of education on effective methods to promptly and efficiently resolve problems, questions, and grievances; and

(B) the dissemination of appropriate educational materials on available health insurance products and on how best to access health care and the rights and responsibilities of health care consumers;

(C) the provision of education on effective methods to promptly and efficiently resolve problems, questions, and grievances; and

(D) the coordination of informational and outreach efforts with health plans, health care providers, payers, and governmental agencies and groups.

(E) the coordination of informational and outreach efforts with health plans, health care providers, payers, and governmental agencies and groups.

(F) the provision of information and assistance, including acting as an authorized representative, regarding internal, external, or administrative grievances or appeals procedures in nonlitigative settings to appeal the denial, termination, or reduction of health care services, or the refusal to pay for such services, under a group health plan or health insurance coverage offered by a health insurance issuer bears to the total number of individuals so covered in all States (as determined by the Secretary). Any amounts provided to a State under this subsection that are not used by the State shall be remitted to the Secretary and reallocated in accordance with this subsection.

(b) Minimum amount.—In no case shall the amount provided to a State under this subsection for a fiscal year be less than an amount equal to 0.5 percent of the amount appropriated for such fiscal year to carry out this section.

(C) Non-Federal Contributions.—A State will provide for the collection of non-Federal contributions for the operation of the office in an amount that is not less than 25 percent of the amount of Federal funds provided to the State under this section.

SEC. 307. HEALTH CARE CONSUMER ASSISTANCE ACT. 

(a) Grants.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ‘‘Secretary’’) shall establish a fund, to be known as the ‘‘Health Care Consumer Assistance Fund’’, to award grants to eligible States to carry out consumer assistance activities, including, but not limited to, activities that describe—

(A) the manner in which the State will provide for the collection of non-Federal contributions for the operation of the office and reallocated in accordance with this subsection that are not used by the State shall be remitted to the Secretary. Any amounts provided to a State under this subsection that are not used by the State shall be remitted to the Secretary and reallocated in accordance with this subsection.

(b) Minimum amount.—In no case shall the amount provided to a State under this subsection for a fiscal year be less than an amount equal to 0.5 percent of the amount appropriated for such fiscal year to carry out this section.

(C) Non-Federal Contributions.—A State will provide for the collection of non-Federal contributions for the operation of the office in an amount that is not less than 25 percent of the amount of Federal funds provided to the State under this section.

(b) USE OF FUNDS.—

(A) BY STATE.—A State shall use amounts provided under a grant awarded under this section to carry out consumer assistance activities directly or by contract with an independent, nonprofit entity. An eligible entity may use some reasonable amount of such grant to ensure the adequate training of personnel carrying out such activities. To reduce amounts unobligated, an eligible entity shall provide consumer assistance services, including—

(A) the provision of education on effective methods to promptly and efficiently resolve problems, questions, and grievances; and

(B) the dissemination of appropriate educational materials on available health insurance products and on how best to access health care and the rights and responsibilities of health care consumers;

(C) the provision of education on effective methods to promptly and efficiently resolve problems, questions, and grievances; and

(D) the coordination of informational and outreach efforts with health plans, health care providers, payers, and governmental agencies and groups.

(E) the coordination of informational and outreach efforts with health plans, health care providers, payers, and governmental agencies and groups.

(F) the provision of information and assistance, including acting as an authorized representative, regarding internal, external, or administrative grievances or appeals procedures in nonlitigative settings to appeal the denial, termination, or reduction of health care services, or the refusal to pay for such services, under a group health plan or health insurance coverage offered by a health insurance issuer bears to the total number of individuals so covered in all States (as determined by the Secretary). Any amounts provided to a State under this subsection that are not used by the State shall be remitted to the Secretary and reallocated in accordance with this subsection.

(b) Minimum amount.—In no case shall the amount provided to a State under this subsection for a fiscal year be less than an amount equal to 0.5 percent of the amount appropriated for such fiscal year to carry out this section.

(C) Non-Federal Contributions.—A State will provide for the collection of non-Federal contributions for the operation of the office in an amount that is not less than 25 percent of the amount of Federal funds provided to the State under this section.
(A) STATE ENTITY.—With respect to a State that directly establishes a health care consumer assistance office, such office shall establish and implement procedures and protocols in accordance with applicable Federal and State laws.

(B) CONTRACT ENTITY.—With respect to a State that, through contract, establishes a health care consumer assistance office, such office shall establish and implement procedures and protocols, consistent with applicable Federal and State laws, to ensure the confidentiality of all information shared by a participant, beneficiary, enrollee, or their personal representative and their health care providers, group health plans, or health insurance issuers with the office and to ensure that no such information is used by the office, or released or disclosed to State agencies or outside persons or entities without the prior written authorization (in accordance with section 164.508 of title 45, Code of Federal Regulations) of the individual or personal representative. The office may, consistent with applicable Federal and State confidentiality laws, collect, use or disclose aggregate information that is not individually identifiable (as defined in section 164.501 of title 45, Code of Federal Regulations). The office shall provide a written description of the policies and procedures of the office that address the manner in which health information may be used or disclosed to carry out consumer assistance activities, and shall provide written agreements with care providers, group health plans, or health insurance issuers with a written authorization (in accordance with section 164.508 of title 45, Code of Federal Regulations) to allow the office to obtain medical information relevant to the matter before the office.

(3) AVAILABILITY OF SERVICES.—The health care consumer assistance office of a State shall not discriminate in the provision of information, referrals, and services regarding the source of the individual’s health insurance coverage or prospective coverage, including individuals covered under a group health plan or health insurance coverage offered by a health insurance issuer, the Medicare or Medicaid programs under title XVIII and XIX of the Social Security Act (42 U.S.C. 1395 and 1396 et seq.), or under any other Federal or State health care program.

(4) RESPONSIBILITIES.—

(A) WITHIN EXISTING STATE ENTITY.—If the health care consumer assistance office of a State that is an existing State regulatory agency or office of an elected State official, the State shall ensure that—

(i) there is a separate delineation of the funding and responsibilities of the office as compared to the other funding, activities, and responsibilities of the agency; and

(ii) the office establishes and implements procedures and protocols to ensure the confidentiality of all information shared by a participant, beneficiary, enrollee, or their personal representative and their health care providers, group health plans, or health insurance issuers with the office and to ensure that no information is disclosed to the State agency or office without the written authorization of the individual or their personal representative in accordance with paragraph (2).

(B) CONTRACT ENTITY.—In the case of an entity that enters into a contract with a State under subsection (a)(3), the entity shall provide assurances that the entity has no conflict of interest in carrying out the activities of the office and that the entity is independent of group health plans, health insurance issuers, providers, payers, and regulators of health care.

(5) SUBCONTRACTS.—The health care consumer assistance office of a State may carry out activities and provide services through contracts entered into with 1 or more nonprofit entities so long as the office can demonstrate that all of the requirements of this section are complied with by the office.

(6) TER\textsuperscript{M}.—A contract entered into under this subsection shall be for a term of 3 years.

(C) REPORT.—Not later than 1 year after the Secretary provides payments under this section, and annually thereafter, the Secretary shall report to the appropriate committees of Congress on the activities funded under this section and the effectiveness of such activities in resolving health care-related problems and grievances.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on S. 1006, the Renewable Fuels for Energy Security Act of 2001.

The hearing, chaired by Senator Tim Johnson, will take place on Friday, July 6, at 9:30 a.m., at the Minnehaha County Administration Building, 415 N. Dakota Avenue, 2nd Floor, County Commission Meeting Room, Sioux Falls, SD.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Shirley Neff, U.S. Senate, Washington, DC 20510.

For further information, please call Shirley Neff at 202/224-6689.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on legislative proposals related to energy efficiency, including S. 352, the Energy Emergency Response Act of 2001; title XIII of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; sections 602-606 of S. 388, the National Energy Security Act of 2001; S. 95, the Federal Energy Bank Act; S.J. Res. 15, providing for congressional disapproval of the rule submitted by the Department of Energy relating to the postponement of the effective date of energy conservation standards for central air conditioners.

The hearing will take place on Friday, July 13, at 9:30 a.m. in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Deborah Estes, U.S. Senate, Washington, DC 20510.

For further information, please call Deborah Estes at 202/224-5360.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on legislative proposals related to reducing the demand for petroleum products in the light duty vehicle sector, including titles III and XII of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; title VII of S. 388, the National Energy Security Act of 2001; oil and gas production (title III and title V of S. 388; and title X of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001); drilling moratoriums on the Outer Continental Shelf (S. 901, the Offshore Drilling Moratorium Act of 2001); oil and gas production (title III and title V of S. 388; and title X of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001); drilling moratoriums on the Outer Continental Shelf (S. 901, the Offshore Drilling Moratorium Act of 2001); oil and gas production (title III and title V of S. 388; and title X of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001); and S. 1006, Renewable Fuels for Energy Security Act of 2001.

The hearing will take place on Tuesday, July 17, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Shirley Neff, U.S. Senate, Washington, DC 20510.

For further information, please call Shirley Neff at 202/224-6689.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on legislative proposals related to energy and
Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources has scheduled a hearing to receive testimony on proposals related to global climate change and measures to mitigate greenhouse gas emission, including S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; S. 395, the National Energy Security Act of 2001; and S. 820, the Forest Resources for the Environment and the Economy Act.

The hearing will take place on Tuesday, July 24, at 9:30 a.m., in room 366 of the Dirksen Senate Office Building.

Those wishing to submit written statements on the legislation should address them to the Committee on Energy and Natural Resources, Attn: Shirley Neff, U.S. Senate, Washington, DC 20510.

For further information, please call Shirley Neff at 202/224–6689.

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general
DEPARTMENT OF THE INTERIOR

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general

The following Air National Guard of the United States officers for appointment in the Reserve of the Air Force to the grades indicated under title 10, U.S.C., section 12203:

To be brigadier general
Col. Tex W. Tanberg, Jr., 0000.

ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

The following named officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

MARINE CORPS

The following named officer for appointment in the United States Marine Corps to
the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601; To be lieutenant general


Army

The following named officer for appointment as Chief of the Bureau of Medicine and Surgery and Surgeon General and for appointment to the grade indicated was received by the Senate and in the Congressional Record of June 18, 2001.

PN536 Air Force nominations (59) beginning STEVEN L. ADAMS, and ending JANNETTE YOUNG, which nominations were received by the Senate and appeared in the Congressional Record of June 18, 2001.

Army

PN29 Army nominations (106) beginning KEITH S. ALBERTSON, and ending ROBERT K. ZUEHLKE, which nominations were received by the Senate and appeared in the Congressional Record of January 3, 2001.

PN43 Army nominations (169) beginning ERIC D. ADAMS, and ending DAVID S. ZUMBO, which nominations were received by the Senate and appeared in the Congressional Record of May 21, 2001.

PN43 Army nominations (6) beginning GREGORY R. BETTS, and ending STEVEN W. VINSON, which nominations were received by the Senate and appeared in the Congressional Record of May 21, 2001.

PN48 Army nominations (179) beginning CYNTHIA J. ABRADINI, and ending THOMAS R. YARBURGH, which nominations were received by the Senate and appeared in the Congressional Record of June 5, 2001.

PN517 Army nominations (3) beginning JAMES R. GELLOTTE, and ending GARY S. OWENS, which nominations were received by the Senate and appeared in the Congressional Record of June 12, 2001.

PN546 Army nominations (6) beginning FLOYD E. BELL, JR., and ending STEVEN N. WICKSTROM, which nominations were received by the Senate and appeared in the Congressional Record of June 12, 2001.

PN537 Army nominations (11) beginning ROBERT E. ELLIOTT, and ending PETER G. SMITH, which nominations were received by the Senate and appeared in the Congressional Record of June 18, 2001.

PN538 Army nominations (9) beginning BRUCE M. ADAMS, and ending GRANT E. ZACHARY, JR., which nominations were received by the Senate and appeared in the Congressional Record of June 18, 2001.

Marine Corps

PN519 Marine Corps nomination of Donald E. Gray, Jr., which was received by the Senate and appeared in the Congressional Record of June 18, 2001.

PN529 Marine Corps nominations (1291) beginning JESSICA L. ACOUSTA, and ending JOSEPH J. ZWILLER, which nominations were received by the Senate and appeared in the Congressional Record of June 1, 2001.

Navy

PN438 Navy nomination of Charlie C. Biles, which was received by the Senate and appeared in the Congressional Record of May 21, 2001.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ORGANIZATION OF THE SENATE

Mr. DASCHLE. Madam President, I now ask unanimous consent that the Senate proceed to S. Res. 120, the organizing resolution submitted earlier today by myself and Senator LOTT.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 120) relative to the organization of the Senate for the 107th Congress, which nominations were received by the Senate and appeared in the Congressional Record of June 18, 2001.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DASCHLE. Madam President, I ask unanimous consent that three letters with reference to the resolution be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:


DEAR COLLEAGUE: We write as Chairman and Ranking Republican Member of the Senate Committee to inform you that we are prepared to examine carefully and assess such presidential nominations.

The Judiciary Committee’s traditional practice has been to report Supreme Court nominees to the Senate on the Committee’s long practice in such nominations. We write as Chairman and Ranking Republican Member of the Senate Committee to inform you that we are prepared to examine carefully and assess such presidential nominations.

We both recognize and have every intention of following the practices and precedents of the Committee and the Senate when considering Supreme Court nominees.

Sincerely,

PATRICK J. LEAHY,
Chairman.

OREN G. HATCH,
Ranking Republican Member.


DEAR COLLEAGUE: On June 29, 2001, the Senate passed the organizing resolution (S. Res. 120) relative to the organization of the Senate for the 107th Congress, which resolutions were received by the Senate and appeared in the Congressional Record of June 18, 2001.

The resolution (S. Res. 120) was agreed to, there being no objection, the Senate proceeded to S. Res. 120, the organizing resolution submitted earlier today by myself and Senator LOTT.

Sincerely,

CHRISTOPHER J. DODD,
Chairman.

MITCH McCONNELL,
Ranking Member.

Mr. DASCHLE. Madam President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 120) was agreed to, as follows:

S. Res. 120

Resolved, That the Majority Party of the Senate for the 107th Congress shall have a one-seat majority on any Committee of the Senate, except that the Select Committee on Ethics shall continue to be composed equally of members from both parties. No Senator shall lose his or her Committee assignments by virtue of this resolution.

Sec. 2 Notwithstanding the provisions of Rule XVII, the Majority and Minority Leaders of the Senate are hereby authorized to appoint their members of the committees consistent with this resolution.

Sincerely,

PATRICK J. LEAHY,
Chairman.

OREN G. HATCH,
Ranking Republican Member.
funding and space prior to June 5, 2001, between the Chairman and Ranking member of each committee shall remain in effect, unless modified by subsequent agreement between the Chairman and Ranking member.

Sec. 4 The provisions of this resolution shall cease to be effective, except for Sec. 3, if the ratio in the full Senate on the date of adoption of this resolution changes.

Mr. DASCHLE. Madam President, the resolution we have just adopted is one that provides for the reorganization of the U.S. Senate.

This is a unique time of transition for the Senate, and I understand that it is a difficult time for many of my Republican colleagues.

If there is one thing that supercedes the status of any Senator or any party, it is our desire to do the work we were sent here to do. That, of course, requires getting the Senate organized to do it.

By passing this resolution, our colleagues can retake their rightful places on committees, committees can take action on legislation, and importantly, we can move forward with Presidential nominations.

This organizing resolution is the result of thorough bipartisan negotiations over the last several weeks.

Many people deserve credit. First and foremost, I thank Senator LOTT. Senator LOTT and I have been through many challenges together. Each of those challenges has strengthened our friendship and our working relationship, and this is no exception. I also thank Senators MCCONNELL, DOMENICI, GRAMM, HATCH, and SPECTER. Our good faith in the negotiating process, and their patience as the process played out, were instrumental in helping us reach this point.

This resolution provides for a one-seat margin on Senate committees, which is consistent with Senate precedent.

It clarifies that—subject to the standing rules of the Senate—the agreements on funding and space that were reached during negotiations involving members early in this Congress will remain in effect for the duration of this Congress.

This resolution also makes it clear that all of these provisions will sunset if the ratio in the Senate changes during this Congress.

I especially commend Senator LEAHY. Senator LEAHY, in his typically fair and wise way, played a critical role in solving the most difficult questions we faced in these negotiations involving Supreme Court and other Presidential nominees.

Together, he and Senator HATCH were able to find a truly constructive solution to the way in which we handle “blue slips” and the way in which we consider nominees to the Supreme Court.

On the subject of blue slips, Senators LEAHY and HATCH have agreed that these “blue slips” will be sent to home-state Senators to ask their views on nominees to be U.S. Attorneys, U.S. Marshals, and federal judges—will now be treated as public information.

I share their belief that this new policy of openness will benefit not only the Judiciary Committee, but the Senate as a whole. I also share their hope that this policy will continue in the future, regardless of which party is in the majority.

In the course of our negotiations, a number of our Republican colleagues also raised concerns about how Democrats would deal with potential Supreme Court nominations, should that need arise.

A second letter to which Senators LEAHY and HATCH agreed says clearly that all nominees to the Supreme Court will receive full and fair consideration.

This is the same policy I stated publicly many times during our negotiations, and I intend to see that the Senate lives up to this commitment.

It has been the traditional practice of the Judiciary Committee to report Supreme Court nominees to the Senate floor once the committee has completed its consideration. This has been true even for a number of nominees that, as follows, defeated in the Judiciary Committee.

Now, Senators LEAHY and HATCH have put in writing their intention that consideration of Supreme Court nominees will follow the practices and precedents of the Judiciary Committee and the Senate.

In reaching this agreement, we have avoided an unwise and unwarranted change to the Standing Rules of the Senate and a sweeping revision to the Senate’s constitutional responsibility to review Supreme Court nominees.

In sum, this is a good, balanced, resolution—one that will enable us to run this Senate in a spirit of fairness.

In a letter to Thomas Jefferson, James Madison explained that the Constitution’s Framers considered the Senate to be the great “anchor” of the Government.

For 212 years, that anchor has held steady. The Senate has withstand Civil War and constitutional crises. In each generation, it has been buffeted by the winds and tides of political and social change.

Today I believe we are proving that this great anchor of democracy can withstand the forces of unprecedented internal changes as well.

I am confident that this resolution is the right way to keep the Senate working. I am appreciative of the support given by all our colleagues today as we now adopt it. If I may, I will say one other thing about this particular resolution. There is a member of my staff whose name is Mark Childress. Our colleagues know him. I am indebted to him for many reasons, as I am to all of my staff. But no one deserves more credit and more praise for the job done in reaching this successful conclusion than Mark Childress. Publicly, I acknowledge his contributions to this noble work and effort. I thank him from the bottom of my heart for what he has done to make this possible.
CHANGING THE NAME OF THE COMMITTEE ON SMALL BUSINESS TO "COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP"

Mr. DASCHLE. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 123, submitted earlier today by Senators KERRY and BOND.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows: A resolution (S. Res. 123) amending the Standing Rules of the Senate to change the name of the Committee on Small Business to the "Committee on Small Business and Entrepreneurship."

The motion to table the motion to object was agreed to, and the Senate proceeded to consider the resolution.

Mr. KERRY. Madam President, I would like to take a few minutes to explain the historic importance of the Resolution I am putting forward with Senator Bond to change the name of the Senate Committee on Small Business to the Senate Committee on Small Business and Entrepreneurship. This is the first piece of legislation I am putting forward as the new Chairman of the Small Business Committee. I am pleased that it is a bipartisan Resolution, continuing the tradition of the Committee.

I would like to thank Senator BOND for co-sponsoring this Resolution, and the Majority Leader and Republican Leader for their cooperation and support in bringing it to the floor of the Senate so quickly.

As many of my colleagues may know, the needs and circumstances of today's entrepreneurs differ from those of traditional small businesses. For instance, entrepreneurial companies are much more likely to depend on investment capital rather than loan capital. Additionally, although they represent less than five percent of all businesses, entrepreneurial companies create a substantial number of new jobs and are responsible for developing a significant portion of technological innovations, both of which have substantial influence on the economy.

Taken together, an unshakable determination to grow and improved productivity lie at the heart of what distinguishes fast growth or entrepreneurial companies from more traditional, albeit successful, small businesses. Early on, it is often impossible to distinguish a small business from an entrepreneurial company. Only when a company starts to grow fast and make fundamental changes in a market do the differences come into play. Policies that support entrepreneurship become critical during this phase of the business cycle. Our public policies can only play a significant role during this critical phase if we understand the needs of entrepreneurial companies and are prepared to respond appropriately.

I believe that adding "Entrepreneurship" to the Committee on Small Business's name will more accurately reflect the Committee's valuable role in helping to foster and promote economic development by including entrepreneurial companies and the spirit of entrepreneurship in the United States. I urge my colleagues to support this Resolution. Thank you.

Mr. DASCHLE. Madam President, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, that any statements relating thereto be printed in the RECORD.

The RESIDING OFFICER. Without objection, the Resolution (S. Res. 123) was agreed to.

(The resolution is located in today's RECORD under "Statements on Submitted Resolutions.")

COMPLIMENTING SENATORS

Mr. DASCHLE. Madam President, let me just say this before I make my final comments. Senator KENNEDY is one of the most historic figures our Chamber has ever had the pleasure of witnessing. We saw, again, the leadership and the remarkable ability that he has to legislate over the course of the last couple of weeks. I didn't think that what he had to endure in the education debate would have been any harder. In many respects, I think the last 2 weeks were harder. It was harder reaching a consensus. We had very difficult and contentious issues to confront, amendments to consider. In all of it, he, once again, took his responsibilities as we would expect of him—with fairness, with courtesy, and with a display of empathy for all Members, the likes of which you just do not see on the Senate floor.

So on behalf of all of our caucus, I daresay on behalf of the Senate, I thank Senator KENNEDY, our chair, for the work he has done.

I also acknowledge and thank our colleague from the Tar Heel State, Senator JOHN EDWARDS. Senator Edwards has done a remarkable job. In a very short period of time, he has demonstrated his capabilities for senatorial leadership. He came to the Senate without the experience of public service, he has in a very brief period of time he has demonstrated his enormous ability to adjust and adapt to Senate ways. He has become a true leader. I am grateful to him for his extraordinary contribution to this bill.

Let me also thank Senator JOHN MCCAIN. This bill is truly bipartisan in many ways, but it is personified in that bipartisanism with the role played by Senator McCain, not unlike other bills in which he has participated. I will mention especially the campaign finance reform bill.

Senator McCAIN has been the key in bringing about the bipartisan consensus that we reached again today. On a vote of 59-36, we showed the bipartisanism that can be displayed even as we take on these contentious and difficult issues. That would not have been possible were it not for his effort.

Let me thank, as well, Senator Judd Gleave and many others on the Republican side for their participation. They fought a hard fight; they made a good case; they argued their amendments extremely well; and they were prepared to bring this debate to closure tonight. I am grateful to them for their willingness to do so.

Finally, I thank Senator HARRY REID. He wasn't officially a part of the committee, but Senator Reid has made a contribution once again to this bill, as he has on so many other bills, that cannot be replicated. This bill not having happened were it not for his remarkable—and I would say incredible—efforts on the Senate floor each and
every day. He is a dear friend. He is someone unlike anyone I think we have seen in recent times. He cares deeply for this body and has worked diligently to bring about a successful conclusion to this bill. We thank him.

Having thanked our colleagues, let me also thank our staff — our floor staff, my personal staff, the leadership staff, the staff of the committee. Were it not for them, we simply could not have done our work. I am extraordinarily grateful to them as well.

ORDERS FOR MONDAY, JULY 9, 2001

Mr. DASCHLE. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 12 noon, Monday, July 9. I further ask consent that on Monday, July 9, immediately following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period for morning business until 1 p.m., with Senators permitted to speak for up to 10 minutes each, with the following exceptions: Senator Durbin, or his designee, from 12 to 12:30 p.m.; Senator Thomas, or his designee, 12:30 p.m. to 1 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DASCHLE. Madam President, on Monday, July 9, the Senate will convene at 12 noon. We will convene at that time for a period for morning business until 1 p.m. At 1 p.m., the Senate will begin consideration of the supplemental appropriations bill under a previous order which calls for all listed amendments to be offered on Monday prior to 6 p.m. There will be no roll call votes on Monday, July 9, and there will be no roll call votes before 2:15 p.m. on Tuesday, July 10.

ORDER FOR PRINTING OF S. 1052

Mr. DASCHLE. Madam President, I ask unanimous consent that S. 1052, as passed by the Senate, be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. DASCHLE. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of H. Con. Res. 176, following the conclusion of the remarks of Senator Kennedy.

The PRESIDING OFFICER. Without objection, it is so ordered.

The distinguished senior Senator from Massachusetts.

PASSAGE OF THE BIPARTISAN PATIENT PROTECTION ACT

Mr. KENNEDY. Madam President, I want to take a brief moment to thank some very special people who were absolutely instrumental in bringing us to the point of the passage of the legislation which gives each of us—and should give each family—to millions of American families who are going to be treated by the doctors in whom they have confidence, by the health care staff from whom they are going to receive their medical care, and not have judgments and decisions overridden by their HMOs. We have not finished the job, but this is a giant step forward.

I want to, as others have done—I feel strongly about it —first thank some special Members of this body. We just heard our leader, Senator DASCHLE. I can remember when Senator DASCHLE was asked after he assumed the leadership of the Senate, what was going to be his first priority, and he mentioned the Patients’ Bill of Rights. For 5 years—for 5 years—we have waited for this moment this evening. For 5 years we have waited, and I believe he has assumed the leadership of the Senate, in a closely divided Senate, he has been able to develop the broad support evidenced in vote after vote, bipartisan in such important public policy areas. I thank my good friend, John Edwards, whose leadership at critical times during this debate and during very important moments was absolutely indispensable and essential. He was extremely effective in his quiet and soft spoken way, but with a steeliness and a strength that is reflected in his great passion on so many of the issues which are in his soul. He has made an enormous difference in making sure we reached this point tonight.

I thank John McCain. Senator McCain, as he has said many times, traveled this country as a Presidential candidate and saw the importance of the issues the Senate legislatively cannot and wanted to know how he could play a role in making sure it came to fruition. He was willing, as he has on so many issues, to take on tough challenges and stay the course, but he has been an absolutely extraordinary leader on this issue, as on many others. It has been a great pleasure to work with him closely on this matter.

As has been mentioned, John Edward has provided extraordinary leadership on this issue. He was indispensable in so many different aspects of the development of the legislation, likely all of those that deal with accountability. We know the importance of the benchmarking of accountability and patient protections in this bill. He was always a steady force, a strong force, a tireless voice for patients and has made an extraordinary mark on this legislation for which we are grateful. This has been a historic team, and I am grateful for them.

I have great appreciation for Harry Reid. I listened the other evening when my good friend, Senator Byrd, mentioned that he had been a deputy leader. He said Senator Reid was really one of the best. Having been a deputy leader myself many years ago, it truly can be said he is the best I have seen in all the time I have been in the Senate. He has been a steady, Anglo-Saxon, and still Members of this body know he is a selfless devotee to this institution and to the issues in which he is involved. He has made such an extraordinary difference in this legislation as well.

I want to thank some other Senators. I see chairing tonight my good friend, and becoming a better friend, Debbie Stabenow. All of us, as we have been working on this legislation, know this has been such a motivating force in her public experience and has been an extraordinary resource and supporter for this legislation. No one in this body cares more deeply about this issue than Senator Stabenow. She reminds us all of that wonderful child, Jessica, of whom she has spoken. She continues to be a presence in this Senate on this issue.

I thank a number of our colleagues who were involved, and I will not be able to mention them all, but I think of Senator Snowe, Senator Bingaman, who worked across the aisle to fashion a very important amendment that helped clarify some important provisions that we had not felt needed further clarification, but they pointed out the reasons for it and were constructive in working through it.

I thank my friend, Dr. Frist, who has been the chairman of our Public Health Subcommittee and with whom I have worked on many different issues. We differed on this issue, but we worked closely on so many issues. I have a great respect for him.

I thank Judd Gregg who has been a worthy adversary as well as an ally on different public policy issues this year. I enjoy working with him.

Some Senators I had not expected to be as involved as they have been and yet were enormously helpful are Senators Nelson, Senator Landrieu, Senator Lincoln, and Senator Bayh. Senator Jeffords spent a lot of time on this issue previously and worked with us and knows the issue carefully.

I have listened to him in small meetings, including at the White House with the President, explaining the importance of this legislation enormously effectively as he does. He has been a wonderful help generally. We didn’t always agree on some of these issues, but nonetheless I value both his friendship and his views.

Senator Breaux has been very much involved with health policy issues and was very involved in this.

Tom Harkin has been a champion on the Patients’ Bill of Rights from the
beginning. He has been there every time we needed a strong voice. He knows this issue. He speaks passionately about it. He understands the significance and the importance not only in the areas of disability protections and standards and medical necessity, but he also understands the nuances and the standards which were used and how that impacts broad numbers of our populations. He was absolutely invaluable throughout this process.

I thank particularly the staff members. These issues are complex. It is difficult to always be able to anticipate the interrelationship between these issues, the importance of what we are doing and how it affects other legislation we have passed, what the impact will be with States and local communities, the impact with the business community, consumers, and others. We have been enormously well served across the board by the staff who have worked on this issue. Just a little while ago that this is Jerry’s last day working in the Senate. He will be working for the legal service programs down in New Mexico. This is a person, like so many others on the Hill, strongly committed to improving our society, and I regret losing him. I know though that he will be involved in making a better community.

I also thank Stacey Sachs who was here day in and day out and always seemed to have the answer. I remember the debate over the questions on the standard of medical necessity and the points being made about the standard we used in the Federal employers health plan. Stacey knew, yes, that was true but in the appeal provision a different standard was used. She knew the details of it, which was a key point. She is an exceptional reservoir of good common sense and knowledge.

Jim Manley has been a great help and a good friend and has helped so much in terms of being able to communicate these issues and this whole policy area effectively. Jim has been tireless. Elizabeth Field, Marty Walsh, so many others worked not just here on the Senate floor. Amelia Dungan and Jackie Gran. For Senator GREGG, Stephanie Janie Oakater of all trades and knows every TRIO program, every program that reaches out to the most needy people in our country and society, and has been enormously helpful to me in that endeavor as well. I also thank Jerry Wesevich who was here day in and day out and always seemed to have the answer. I remember the debate over the questions on the standard of medical necessity and the points being made about the standard we used in the Federal employers health plan. Stacey knew, yes, that was true but in the appeal provision a different standard was used. She knew the details of it, which was a key point. She is an exceptional reservoir of good common sense and knowledge.

Jim Manley has been a great help and a good friend and has helped so much in terms of being able to communicate these issues and this whole policy area effectively. Jim has been tireless. Elizabeth Field, Marty Walsh, so many others worked not just here on the floor but outside, as well, in terms of working with the various groups and helping to bring what is happening at the grass roots here to the Senate floor. Amelia Dungan and Jackie Gran. I thank David Bowen very much. He is a great master in understanding so much of the new research and what is happening in the outer edges of biomedical research. We had debate on some of those issues, and we will have more later. These are complex ethical issues and questions. Dave is a master of all of them. Beth Cameron and Paul Kim also deserve thanks. Paul joined our staff and has been enormously valuable and helpful, as he was in the House of Representatives. Thanks also goes out to our many dedicated interns, Dan Muñoz, Madhu Chugh, Tarak Shah, Nina Dutta, Nicole

ADJOURNMENT UNTIL MONDAY, JULY 9, 2001

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 12 noon, Monday, July 9, 2001.

Thereupon, the Senate, at 8:59 p.m., adjourned until Monday, July 9, 2001, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate June 29, 2001:

DEPARTMENT OF THE TREASURY
HERSHETTA HOLSMAN FORK, OF NEVADA, TO BE DIRECTOR OF THE MINT FOR A TERM OF FIVE YEARS, VICE JAY JOHNSON, RESIGNED.

NATIONAL TRANSPORTATION SAFETY BOARD
MADISON BLAKEY, OF MISSISSIPPI, TO BE CHAIRMAN OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM OF TWO YEARS, VICE JAMES E. HALL, TERM EXPIRED.

MADISON BLAKEY, OF MISSISSIPPI, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM OF TWO YEARS, VICE JOHN ARTHUR MONK, RESIGNED.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA
DENNIS L. SCHORNACK, OF MICHIGAN, TO BE COMMISSIONER OF THE INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA, VICE THOMAS L. BALDWIN, RESIGNED.

INTERNATIONAL MONETARY FUND
RANDAL QUARLES, OF UTAH, TO BE UNITED STATES EXECUTIVE DIRECTOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF TWO YEARS, VICE KARIN LISSAKERS, RESIGNED.

DEPARTMENT OF EDUCATION
CAROL D’AMICO, OF INDIANA, TO BE ASSISTANT SECRETARY FOR VOCATIONAL AND ADULT EDUCATION, DEPARTMENT OF EDUCATION, VICE PATRICIA WENTWORTH MUSEL, RESIGNED.

IN THE ARMY


TO BE COLONEL
CARL R. RAGWEll, 0000
JAMES E. CRONGA, JR., 0000
ALLEN M. HARRILL, 0000

IN THE NAVY


TO BE CAPTAIN
MAK E. ABRAMS, 0000
JOSE A. ACOSTA, 0000
MARTINEZ M FALLAN, 0000
THOMAS P. FALLAN, 0000
SANDRA A. ALMEIDA, 0000
PETE K. AMATO, 0000
DYRE L. ANDERSON, 0000

S7289
CONGRESSIONAL RECORD — SENATE
June 29, 2001
the Senate June 29, 2001: 

WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be brigadier general

COL. REX W. TANBERG JR., 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 623:

To be major general

BRIG. GEN. MICHAEL A. RAMEL, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. DAVE L. METERBROOK, 0000

BRIG. GEN. WILBERT D. PEARSON JR., 0000

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 613:

THE FOLLOWING NAVY NOMINATION OF CHRISTOPHER M. RODRIGUES.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 621:

To be vice admiral

VICE ADM. GORDON S. HOLDERT, 0000

CONFIRMATION

Executive nominations confirmed by the Senate June 29, 2001:

Department of the Interior

NRA. A. MCNAIR OF OKLAHOMA, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR.
EXTENSIONS OF REMARKS

HONORING THE LATE JIMMIE ICARDO

HON. WILLIAM M. THOMAS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. THOMAS. Mr. Speaker, I am sad to report that Kern County, California lost one of its most prominent and successful friends when Jimmie Icardo passed away. Few can or will match commitment to his family, his church and to Kern County.

The businesses Jimmie developed are going to be models for young Californians for years to come. He built strong family farm operations that produced quality melons, tomatoes, peppers and other crops. He was active in the oil and gas, banking and real estate industries. Jimmie made his own successes through honest dealings with his neighbors and a tremendous amount of hard work. He was equally committed to his community.

Jimmie Icardo will also be remembered for the tremendous support he has given the California State University at Bakersfield over the years, in particular the University’s athletic programs. Jimmie ran barbecues to raise money for athletic scholarships, established a trust to benefit the program and supported the school in other ways. His strong support over several decades helped build CSU Bakersfield into the school it is today. The school’s decision to rededicate its athletic center as the Jimmie and Marjorie Icardo Activities Center is only a start toward acknowledging how hard Jimmie worked over the years to support an important educational resource for Kern County.

Jimmie Icardo was a person you asked for help to get things done. His strengths and sense of commitment to our community are going to be missed by those who now have to measure up to his example.

REMOTE SENSING APPLICATION ACT OF 2001

HON. MARK UDALL
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. UDALL of Colorado. Mr. Speaker, today I am introducing the Remote Sensing Applications Act of 2001. This bill would help communities grow more smartly by giving them greater access to geospatial data—information from analysis of data from orbiting satellites and airborne platforms—from federal agencies such as NASA and commercial sources.

I am pleased that my colleague Representative Jim GREENWOOD is joining me as an original cosponsor of this bill.

Many of our cities, in Colorado and across the country, are experiencing problems with unchecked and unplanned growth—otherwise known as sprawl. Planning for growth is primarily the job of state and local government. But the federal government also has an important role to play—whether through funding transportation, infrastructure, schools, and the like; establishing federal tax incentives and disincentives for private development; or pitting in place federal permits and licenses that may contribute to or restrain sprawl.

The federal government can also help to provide information to help towns and cities grow in a smarter and more sustainable way. Wise community planning and management cannot happen if communities do not have information to make sound decisions. The federal government can bring valuable—and powerful informational planning resources to the table.

One new space-age tool is the use of satellites to provide images of the Earth’s surface. We now have technology using geospatial data from satellites—that can produce very accurate maps that show information about vegetation, wildlife habitat, flood plains, transportation corridors, soil types, and many other things. Satellite imagery and remote sensing, when combined with Geographic Information System (GIS) and Global Positioning Satellite (GPS) system information, can be invaluable tools for use in such areas as land-use planning, transportation, emergency response planning, and environmental planning. Getting this integrated geospatial data to local communities would give planners the important information they could use to avoid problems and help communities grow more smartly.

As a member of the House Science Committee and the Space and Aeronautics Subcommittee, I have learned about the technological opportunities available from federal agency activities and capabilities. The bill I am introducing would establish a program that will demonstrate the effectiveness of the use of integrated geospatial data to other governmental sectors.

The bill would establish in NASA a program of grants for competitively awarded pilot projects to expand the uses of sources of remote sensing and other geospatial information to address state, local, regional, and tribal agency needs. This proposed legislation would build on and complement an applications program that NASA’s Office of Earth Science announced earlier this year. Like NASA’s program, the Remote Sensing Applications Act would seek to translate scientific and technical capabilities in Earth science into practical tools to help public and private sector decisionmakers solve practical problems at the state and local levels.

The Remote Sensing Applications Act has the potential to begin to bridge the gap between established and emerging technology solutions and the problems and challenges that state and local communities face regarding growth management and other issues. I look forward to working with Rep. GREENWOOD and other Members of the House to move forward with this important initiative.

Mr. TOWNS. Mr. Speaker, I rise in honor of Doctor Ofem Ajah for his dedication to the field of medicine and health education.

Doctor Ajah, born in Nigeria, was faced with many obstacles throughout his education. Born to peasant farmers, Ofem was required to help on the farm while he attended school. His family was further impoverished and his education interrupted when war broke out in Nigeria. He continued with his secondary education on an academic scholarship. His academic excellence propelled him to the University of Ilorin in Nigeria for both his undergraduate and medical degrees.

Ofem is and always has been involved in community affairs. In high school, he was editor-in-chief of the school magazine. His involvement continued into medical school where he served as Secretary of the Medical Students Union as well as Chief Organizer of the Nigerian Medical Students’ Games. After completing his medical degree, Ofem taught mathematics in a high school in Nigeria.

It was only after Ofem finished his medical internship that Ofem immigrated to the United States. As a distinguished physician, Ofem continued his medical training at the Interfaith Medical Center in Brooklyn where he became Chief Resident. Pursuing his inner quest for knowledge, Ofem obtained a specialty in gastroenterology.

For Ofem Ajah, being an accomplished doctor has enabled him to give of his free time. Dr. Ajah regularly donates his time and energy to educating everyone about colon cancer. He is also currently working on his second novel. Ofem devotes himself to the love of his life, Francine Smalls-Ajah. Together, they have one daughter, Achayen, and two sons, Anijah and Tuniche.

Mr. Speaker, Doctor Ofem Ajah has devoted his life to serving his community through his excellent knowledge of medicine. As such, he is more than worthy of receiving our recognition today. I hope that all of my colleagues will join me in honoring this truly remarkable man.

THE CITY OF EMMERSON

HON. BOB BARR
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. BARR of Georgia. Mr. Speaker, this summer, the City of Emerson will move into a new City Hall facility. In honor of this occasion, I would like to recognize some of the unique historical facts underlying the development of this small and growing town in Bartow County, Georgia.

The history of Emerson, at least for human purposes, begins with its settlement by native
Americans. At the time the first European settlers arrived, it was inhabited primarily by Cherokee Indian tribes, whose artifacts still line the shores of the Etowah River.

Following its settlement, Emerson began to grow into a community built on nearby rail lines; rich agricultural lands; and near iron, graphite, and gold deposits. During the Civil War, the area in and around Emerson was crossed by numerous military forces as Sherman began his infamous drive toward the sea.

Returning war veterans found their homes near Emerson in desolation. Fortunately, the people had a spirit that could not be conquered. They began work rebuilding their town, and succeeded in having it incorporated in 1889.

That spirit of community and growth continues in Emerson today, as the town continues to expand to accommodate growth near metro Atlanta, while retaining its picturesque small town character. I join the citizens of Emerson in saluting their city as it passes an important milestone and moves into a new City Hall.

CONGRATULATIONS TO SUSAN CHASSON

HON. CHRIS CANNON
OF UTAH
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. CANNON. Mr. Speaker, I would like to congratulate Susan Chasson, a woman of great compassion. This afternoon Ms. Chasson will be awarded the Robert Wood Johnson Foundation Community Health Leadership Program Award. As a nurse and a victim's advocate, Ms. Chasson was able to see that the system for assisting children who are victims of abuse was not working, and that the system itself often caused more trauma to the child than it helped. Susan acted on this and returned to school to obtain a law degree so that she could have a greater impact on the system.

In 1991, Ms. Chasson founded the Children's Justice Center in Provo, Utah to help children who are victims of physical abuse and sexual assault. The Center provides these children with a homelike environment where they can tell their stories and begin the healing process. Their staff currently serves over three children — the shortage of nurses in health care facilities across the Nation. Nurses are an absolutely essential component of our health care system — no piece of medical equipment will ever replace the around-the-clock surveillance provided by our Nation's nurses. There is simply no substitute for the commitment of humanity that nurses bring to medicine. Therefore, I find it extremely alarming that one in five nurses plans to quit the profession within five years due to unsatisfactory working conditions. By the year 2008, the Bureau of Labor Statistics projects that we will need 450,000 additional registered nurses in order to meet present demand. This projection neglects the fact that around that same time, 78 million baby boomers will start becoming eligible for Medicare.

How did we end up in this situation? Imagine for a moment, if you will, that you are one of the millions of young people across the country trying to decide upon a career. Suppose nursing is a profession that sincerely interests you. Would you still be interested upon discovering that nurses can expect to work nights, weekends, and holidays? Would you still be interested after learning that nurses routinely work 16-hour shifts or longer, and can be forced under threat of dismissal to work mandatory overtime? Would you still be interested after realizing that nurses receive lower salaries, no job security, and less retirement benefits than their classmates who chose other professions? Would you still be interested after finding out that, with the advent of managed care, nurses now have to spend almost as much time scrambling to fill paperwork for patients? Would you still be interested when you learn that the very real possibility exists that you may be the only hospital staff member available to supervise the well-being of an entire floor of critically ill patients? It doesn't take a great deal of insight to realize that no matter how passionate your intentions, the disadvantages of the nursing profession have become increasingly prohibitive.

Yet, as bad as the nursing crisis is for nurses, its worst consequences will be felt by patients. Last year a investigative report by the Chicago Tribune revealed that since 1995, at least 1,720 hospital patients have been accidentally killed, and 9,854 others injured as a result of the actions of registered nurses across the country. Interestingly enough, instead of attacking the Tribune report, nurses apologized it because it proved to the American public what they had known for a long time — our nation's nursing corps is being stretched too thin, in part due to reckless penny-pinching by managed care companies, and in part due to government underfunding of hospitals.

How bad is the crisis? In the mid-90's, short-sighted budget cuts, both by the government and by managed care companies, forced many hospitals that were staffed entirely by registered nurses to rely on lesser-trained practical nurses and nurse aides instead. Nurse aides, many of whom are not required to have high school diplomas, now constitute over one-third of nursing staffs in many hospitals. In my hometown of Chicago, the situation is so dire that housekeeping staff hired to clean rooms have been pressed into duty as aides to dispense medicine. Hospitals now routinely order nurses to care for 15 patients or more at a time, almost double the recommended patient load. Overworked nurses are being forced to juggle more tasks than any single person can be expected to handle, and are being asked to do procedures that they haven't been adequately trained for.

Our nurses have reached the end of their rope. To quote Kim Gleden, a registered nurse from Illinois: "I wake up every day and hope I don't kill someone today. Every day I pray: God protect me. Let me make it out of there with my patients alive." Or perhaps more tellingly, Tricia Hunter, executive director of the Association of Women's Health, Obstetric and Neonatal Nurses, stated: "I don't know a nurse who would leave anyone they love in a hospital alone."

Mr. Speaker, this is the face of nursing today. The nursing profession needs our help. As a profession, nurses have a rich history of doing whatever it takes to provide adequate patient care. Nurses generally don't make a big fuss over working conditions. The fact that they are telling us that something is seriously wrong with our health care system today. Therefore, I support the legislation that would enact upwardly adjustable nurse staffing ratios as a condition of participation in Medicare and Medicaid, and I support legislation banning mandatory overtime. I also support the Patients' Bill of Rights introduced by Mr. McCain, Mr. Edwards, and Mr. Dingell in the Senate, and by Mr. Ganske and Mr. Dingell in the House because it includes a provision that protects health care professionals from retaliation when they speak out for their patients.

Lastly, I support the Nurse Reinvestment Act, H.R. 1436, because it addresses the need to attract more people into the nursing profession. I support all of these measures because if we don't act to solve our current nursing crisis, we will all pay the price at some point down the line.

IN HONOR OF ANDREW KIM

HON. EDOLPHUS TOWNS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. TOWNS. Mr. Speaker, I rise in honor of Andrew Kim on the occasion of his installation as president of the almost half million member Korean American Association of Greater New York and the obstacles that he had to overcome to attain such a prestigious position.

Mr. Kim has overcome many personal obstacles that others might have stumbled upon. Contracting Polio in his native Republic of South Korea, Mr. Kim was stigmatized and labeled as "unlucky." In fact, Mr. Kim is self-educated because he chose to cut short his formal education as he saw it as a burden to his parents. Mr. Kim was also denied employment because of his disability and therefore found himself with a unique opportunity to found his own electronic repair shop. Mr. Kim, fascinated with America, studied for a test that would allow him to immigrate and have a job. Mr. Kim is a firm believer in the American dream. America offered Andrew Kim a fresh start away from the cultural attitudes of South Korea. Mr. Kim worked his way up in New York going from job to job.

As a nurse from Illinois: "I wake up every day and hope I don't kill someone today. Every day I pray: God protect me. Let me make it out of there with my patients alive." Or perhaps more tellingly, Tricia Hunter, executive director of the Association of Women's Health, Obstetric and Neonatal Nurses, stated: "I don't know a nurse who would leave anyone they love in a hospital alone."

Mr. Speaker, this is the face of nursing today. The nursing profession needs our help. As a profession, nurses have a rich history of doing whatever it takes to provide adequate patient care. Nurses generally don't make a big fuss over working conditions. The fact that they are telling us that something is seriously wrong with our health care system today. Therefore, I support the legislation that would enact upwardly adjustable nurse staffing ratios as a condition of participation in Medicare and Medicaid, and I support legislation banning mandatory overtime. I also support the Patients' Bill of Rights introduced by Mr. McCain, Mr. Edwards, and Mr. Dingell in the Senate, and by Mr. Ganske and Mr. Dingell in the House because it includes a provision that protects health care professionals from retaliation when they speak out for their patients.

Lastly, I support the Nurse Reinvestment Act, H.R. 1436, because it addresses the need to attract more people into the nursing profession. I support all of these measures because if we don't act to solve our current nursing crisis, we will all pay the price at some point down the line.
Mr. Kim’s biggest business success has come in the form of his Lisa Page store, a leading cell phone and pager retailer. Working in a diverse neighborhood has encouraged Mr. Kim to learn the numerous languages of his customers, which has led to him being a major community resource. Mr. Kim has dressed the softball team in his neighborhood and all the kids on the team respect Mr. Kim for his involvement and mentoring. In fact, after they won a trophy, the presented it to Mr. Kim as a token of their appreciation for all that he does in the community.

Mr. Kim has enjoyed growing recognition throughout the community, which has led him to become more involved in the community. He served as president of the Korean American Association of Mid-Queens. He recently found himself in a tough election campaign for the Greater New York, where he was once president of the Korean American Association of Mid-Queens. He recently served as president of the Korean American Association of Greater New York, where he was once again faced with many of the stigmas that he had left South Korea to escape. Nonetheless, Mr. Kim was able to overcome and win the prestigious post.

Mr. Speaker, Andrew Kim has overcome many obstacles in his life to become the president of a half million-member organization. For these achievements, he is more than worthy of receiving our recognition today as he is awarded a truly hard-earned honor. I hope that all of my colleagues will join me in honoring this truly remarkable man.

RECOGNIZING THE CHIEFTAIN’S MUSEUM, ROME, GEORGIA

HON. BOB BARR
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. BARR of Georgia. Mr. Speaker, it has been written that “Cherokee tradition held that anywhere three rivers met was holy, and Head of Coosa is just that.” The Oostanaula, Etowah and Coosa Rivers meet in the center of Rome, Georgia, which is noted as one of the top small cities in the country.

A leading Cherokee Nation, Chief Ridge chose to settle in the 1800’s with his bride, Susanna, on the banks of the Oostanaula, near the point where the three rivers meet. The home was called “the Chief-tain.” Chief Ridge, who had given the title “Major” by Andrew Jackson, agreed to sign the Treaty of New Echota in 1835 and left his home in Rome a year before “The Trail of Tears.” The Cherokee killed Major Ridge and his son for signing the treaty.

After Major Ridge left his home, “the Chief-tain,” was massacred through a number of hands, and eventually was donated to the Junior League of Rome. The Museum remains open to the public because of the Chieftains Museum Association, a non-profit organization. Members of the organization continue to search for pieces of history with regard to “the Chief-tain” and the Cherokee people.

The museum, built by Monrovian and Cherokee craftsmen, is impressive. A large collection of books on Major Ridge and the Cherokee Nation in Georgia are available at the museum. The period furniture and many artifacts, as a site as a result of archaeological digs, make the museum a favorite place for school groups and those interested in the history of the Cherokee Nation.

The Cherokee called their home in North Georgia “the Enchanted Land.” More than twenty distinct groups of Cherokee Indians headed west along three separate routes. Today the general term “The Trail of Tears” is applied to all three routes; however, to the Cherokee, only the northern land route was called “The Trail Where They Cried.” The Junior League and the Chieftains Museum Association of Rome, Georgia are working diligently to make certain that we not forget the true “Native Americans.” And ensuring our children are aware of the culture of the people who were forced to sacrifice their “Enchanted Land.”

IN MEMORY OF MR. ROBERT L. DILLARD, JR.

HON. RALPH M. HALL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. HALL of Texas. Mr. Speaker, I rise to pay tribute to an outstanding citizen of the State of Texas, the late Robert L. Dillard, Jr. of Dallas, who died at the end of November, 2000. Mr. Dillard was an active and beloved member of his community—and he will be dearly missed.

Robert was born on September 30, 1913, the son of an independent oilman. He followed in his father’s footsteps as a young man working in the oil fields of Texas to finance his education. His hard work and perseverance earned him a law degree from the University of Texas in 1935 and an L.L.M. from Harvard in 1936. After receiving his degrees, Robert served as Assistant City Attorney for the City of Dallas from 1941-1945. From 1945 until his retirement in 1978, he worked in an executive capacity for Southland Life Insurance Company of Dallas, retiring as Executive Vice President.

Robert volunteered much of his time and talents to many civic endeavors. He served as president of the Dallas Independent School District from 1961-1962, chairman of the Board of Trustees of Methodist Medical Center, chairman of the National Board of Directors of Camp Fire Girls, chairman of Region 10 Education Service Center, and a member of the Board of Directors at C.C. Young Retirement Home. He was also active in local and state government and in Highland Park United Methodist Church, where he served as a lay leader and a long-time Sunday School teacher.

A special part of Robert’s life, fifty-six years total, was devoted to membership in the Dallas Scottish Rite of Freemasonry. He was initiated in 1938 into Dallas Lodge No. 760 and held numerous leadership positions within the organization, including being a co-founder of a new Lodge in Dallas, serving as president of the Board of Directors of the Masonic Hospital and School of Texas and vice-chairman of the Board of Trustees of Texas Scottish Rite Hospital for Children. In 1953 he became a Thirty-Third Degree Inspector General, in 1961 was a Grand Master of Masons in Texas, and in 1977 served as a Venerable Master of the Dallas Lodge of Perfection. As the culmination of his lifetime of dedication to the Freemasons, in 1995 Robert became one of only eight men in Texas in the past one-hundred years to receive the highest honor the Supreme Council of the Scottish Rite can bestow, the Grand Cross of Honor.

Robert left behind a loving family, including his wonderful wife of 63 years, Dundee, a son, two daughters, 13 grandchildren, and three great grandchildren. He was devoted to his family and community and his Fraternity of Freemasons—and he leaves behind a legacy of dedication and service that will be remembered by many.

Mr. Speaker, Robert was one of a kind—and we will miss him. As we adjourn today, let us remember a true American and friend, Mr. Robert L. Dillard, Jr.

IN RECOGNITION OF DANIEL LEVIN

HON. DANNY K. DAVIS
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to recognize one of Chicago’s finest citizens, Mr. Daniel Levin, who last week was named the American Jewish Committee’s 2001 Human Rights Medallion Award recipient.

Since 1963, the Human Rights Medallion has been awarded annually to leading Chicago citizens who have stood for the goals that have shaped the American Jewish Committee since it was established in 1906: human rights and equal opportunity for all, and constructive relations between America’s many religious, ethnic and racial communities.

Chairman of The Habitat Company, Dan Levin has been a real estate developer since 1957. He has been active in development and management activities involving in excess of 20,000 residential units, and has been principally responsible for the financing, structuring and equity syndication of the developments. In 1987, Dan Levin, with The Habitat Company, was appointed Receiver of The Chicago Housing Authority family housing development program by the U.S. District Court in Chicago. He is also the managing general partner of the East Bank Club, which is considered the finest physical fitness and social facility of its kind in the country.

Dan Levin’s first major Chicago development, in partnership with James P. McHugh of McHugh-Levin Associates, was South Commons, a 30-acre urban renewal site between 26th and 31st Street on the south side of the City. During his career, he has also developed a wide variety of subsidized and non-subsidized housing including, on the South Side, Quadrangle House and Long Grove House. Dan Levin also developed Wheaton Center, a 28-acre urban renewal development in downtown Wheaton. On Chicago’s Gold Coast, he has developed, among other properties, Newberry Plaza, Hulin Plaza, Aspen Plaza, Columbus Plaza and the Residences of Cityfront Center.

The largest urban redevelopment in which Dan Levin has been involved is the Presidential Towers complex located on a two square block area in the near west loop constructed in 1983. The land on which Presidential Towers was developed had become a skid row district of deteriorating residential hotels and industrial properties. Presidential
Towers is considered to be a major factor in the revitalization of the area.

Dan Levin graduated from the University of Chicago with a B.A. and J.D. degree. He is a member of the Visiting Committee of the University of Chicago School of Public Policy, a Trustee of YWTTW, a member of the MIT College of Architecture Board of Overseers, a member of the Board of Trustees for the Jewish Reconstructionist Rabbinical College, a Director of the American Jewish Committee, a Director of the Environmental Law and Policy Center, a Director of the Multi-Family Housing Council, and is active in other community and professional organizations.

Dan Levin has proven that he is a man to emulate in both business and in public service. He has helped to create homes, jobs and other opportunities for people in need of a helping hand, and he has played a major role in the economic growth and development of Chicago. It is with great pleasure that I commend Dan Levin for his years of service and congratulate him on being named this year’s Human Rights Medallion awardee. Mr. Speaker, I ask that you join our colleagues, Dan’s friends, his wife Fay and the rest of his family, the American Jewish Committee, and me in recognizing Dan Levin’s outstanding and invaluable service to the Chicago community.

IN HONOR OF THE REVEREND DOCTOR GLYSER G. BEACH

HON. EDOLPHUS TOWNS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. TOWNS. Mr. Speaker, I rise in honor of Reverend Doctor Glycer G. Beach, Senior Pastor of Vanderveer Park United Methodist Church, in recognition of his service to his community.

Reverend Beach is a lifetime learner, always taking on new challenges. He holds an A.A. from Lon Morris College as well as a B.A. and M.A. in Behavioral Science from Scarritt College. Rev. Beach also earned a Masters of Divinity as well as a Doctorate of Ministry from Drew University. He also holds a D.Th from the California Graduate School of Theology in addition to his D.D from Teamer School of Religion.

His devotion to ministry began while he served in the United States Army. He is the Deputy Chaplain of the 77th Regional Support Command. Graduating Officer Basic and Officer Advance Courses and also the U.S. Army’s Command and General Staff College, Dr. Beach holds the rank of LTC.

For the last 23 years, Glycer Beach has dedicated himself to the United Methodist Church. He has pastored churches in the Bronx, Queens, Manhattan and Brooklyn. Rev. Beach has special training in many areas including Critical Incident Debriefings, Suicide Awareness and Prevention Counseling, Family Restructuring, Marriage Enrichment, and Youth Counseling.

Rev. Beach’s activism is apparent throughout the entire New York area. He was instrumental in electing a fellow pastor to office. He also helped thousands of immigrants become citizens. He was a member of the Board of Directors of Harlem Congregations for Community Improvement, which under his tenure developed over 1000 units of housing. The Reverend also served as the Executive Director of Metropolitan Community Young Adult Training Program, which houses and give guidance to young adults who are homeless, drug free, and in need of higher education. He is actively involved in helping war veterans receive the benefits and services due to them.

Mr. Speaker, Reverend Doctor Glycer G. Beach has devoted his life to serving his community, his church and his people. As such, he is more than worthy of receiving our recognition today. I hope that all of my colleagues will join me in honoring this truly remarkable man.

RECOGNIZING THE HONORABLE TOM PRICE, MD—STATE SENATE, GEORGIA

HON. BOB BARR
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. BARR of Georgia. Mr. Speaker, it is in doing what is right that a man encounters the essential challenges of life. Oftentimes the most difficult part of this challenge is the perception of what precisely is the “right” thing to do. The Honorable Tom Price is being honored for having done the right thing respecting the health of others. His service to others has been truly outstanding. He has always shown an intense concern for the physical well being of the people entrusted to his representation and medical practice. Coming from a profession whose traditional oath was to “first do no harm,” he has been well-educated according to the principles on which the protection of public health must be grounded. The man who lives for such principles as these is truly honorable and ought to be awarded with the honors and the respect of the people.

Currently in his third term in the Georgia Senate, Dr. Price has made a name for himself by taking on several difficult issues; measures to insure the safety of our childcare centers, to strengthen the prevention of drunk driving, and to provide greater patient choice. Life in a society must be mutually beneficial and comfortable to the citizenry. In order for this life to be possible, the public health must be protected. Dr. Tom Price has made this his primary legislative concern and it is for this that on July 17, 2001 he is to be given the Dr. Nathan Davis Award for Outstanding Government Service by the American Medical Association. I join in saluting Dr. Tom Price for his heroic dedication to the public health of the State of Georgia.

IN HONOR OF OUR EMERY COUNTY PUBLIC LANDS COUNCIL

HON. CHRIS CANNON
OF UTAH
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. CANNON. Mr. Speaker, throughout the prosperous history of this great state, our ancestors valued harmony between community growth and preservation of resources. We are encircled by beautiful landscapes and enjoy the ability to find escape and solace in the vast mountains, meandering rivers, or immense desert lands. Utah’s natural beauty and rich resources demand a careful balance between protection and growth of competing interests.

The Emery County Commissioners, along with the citizens of Emery County, responded to the need for a thoughtful, responsible, and cooperative effort in planning wise land management policy within the county. In an effort to provide a forum for all interested parties to voice their concerns and influence policy, an invitation was extended to elected representatives, federal and state land management agencies, county citizens, and individuals representing various recreational land user and environmental groups to establish the Emery County Public Lands Council. Their charge was to find the best possible solution for managing lands within Emery County’s boundaries, while setting aside their differences to become a united and cohesive voice.

The Emery County Public Lands Council soon learned that it agrees on more issues than it ever anticipated. As actions express an earnest aspiration to safeguard the San Rafael Swell. As so ably spoken by County Commissioner Randy Johnson, “Environmentalists share with Emery County a great desire to protect the lands of the San Rafael, but differ philosophically over what kinds of management should be implemented.” Every stakeholder possesses a deep commitment to protect the San Rafael Swell and safeguard its matchless and distinctive qualities for posterity. Members of the Council advocate for local users and work with federal and state agencies to develop a public lands strategy. They contribute to land use planning to guarantee cooperation among these ecotonic bodies and Emery County interests.

In our quest for a united effort to safeguard and protect our land for thoughtful use and community stability, I recognize the need for a joint endeavor to accomplish our objectives. I commend the Emery County Public Lands Council for acting as a model for all counties, states, and individuals who desire to preserve our nation’s beautiful natural resources.

IN MEMORY OF HENRY WADE

HON. RALPH M. HALL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. HALL of Texas. Mr. Speaker, I rise today to pay tribute to a great and legendary District Attorney, the late Henry Wade of Dallas, whose 35-year career brought him national attention for his handling of the murder trial of Jack Ruby and the landmark abortion case Roe v. Wade. Henry passed away on March 1 at the age of 86, leaving a powerful legacy that will be reviewed and remembered as part of our Nation’s history.

It is said that Henry never lost a case he personally prosecuted. He took office in 1951 and compiled one of the Nation’s lowest rates of acquittal. In 1964, Henry led the prosecution of Jack Ruby, who shot to death Lee Harvey Oswald, the man assassinating President Kennedy. Ruby died in prison while awaiting a death sentence. The 1973 Roe v. Wade decision establishing the right to
an abortion began in Texas when a pregnant woman identified in court documents as “Jane Roe,” sued Henry for enforcing a state law prohibiting abortion except when necessary to save a woman’s life. These famous cases will be reviewed by attorneys, the courts, and students of history for years to come. “Henry Wade” evokes an image of a quintessential Texas prosecuting attorney—a formidable and compelling advocate in the courtroom—whose folksy, country-boy demeanor disguised his keen intellect. Henry was a 1938 graduate of the University of Texas law school with highest honors, an editor of the law review, and a member of the Order of the Coif and Phi Beta Kappa. Throughout his illustrious career, Henry was a role model for countless young practicing attorneys—as well as a nemesis for defense lawyers.

Following law school, Henry practiced law, was an FBI special agent in the United States and abroad, and served in the Navy during World War II. After the war, he joined the district attorney’s office in Dallas, becoming chief felony prosecutor before winning election as district attorney. And the rest is history.

During World War II Henry served as a Fighter Director for Navy pilots. At one time he was at the top of the list in “splashers”—the term used for destroyed Japanese planes. Henry and his lifelong friend and fellow Navy officer, Thomas Unis, were inseparable during the War, and they both made a great and successful transition into public civilian life. The late Tom Unis prosecuted with Henry and later was a leading and highly regarded attorney and partner in the Dallas law firm, Strasburger, Price, Kelton, Martin and Unis. I was privileged to litigate with both Henry and Tom and served with them at a couple of bases in the Pacific toward the end of World War II. I dearly respected and loved these two guys—as did all who knew them.

Mr. Speaker, Henry was a great and legendary District Attorney, a super American, and a good friend of mine. He will be missed by his children and their families, Michele Brandenberger and husband, Mike; William Kim Wade and wife, Suzanne; Henry Wade, Jr., and wife, Wendy; Wendy Bailey and husband, David; Bari Henson and husband, Dave; and 15 grandchildren. And he will be remembered. As we adjourn today, let us do so by paying our last respects to “The Chief”, as he was known around the Dallas courthouse—Henry Wade.

HONORING UNITED STATES NAVAL RESERVE CAPTAIN JAMES W. KELLEY, JR. UPON HIS RETIREMENT

HON. GARY G. MILLER OF CALIFORNIA IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. GARY G. MILLER of California. Mr. Speaker, I rise today to commend the achievements of United States Naval Reserve Captain James W. Kelley, Jr. and wish him well upon his retirement.

In August of 1970, a time in which military service was socially unfavorable, Captain Kelley enlisted in the United States Marine Corps. He served with the Sixth Marines in Camp LeJune, North Carolina and the Fourth Marines in the Republic of South Viet Nam. He graduated from Villanova University with a Bachelor of Arts Degree in Political Science in 1975. He also holds a Master of Arts Degree in Criminal Justice from New York University and a Juris Doctorate Degree from Seton Hall School of Law.

In September of 1978, Captain Kelley received his commission as an Ensign in the Judge Advocate Corps. During his active duty military career, Captain Kelley served as a Navy Trial Counsel and a Staff Judge Advocate.

Captain Kelley was released from active duty in January of 1985, and he affiliated with Naval Reserve Intelligence Unit NISRO 2130. As an intelligence officer, he served with VP94, U.S.S. America, US CINCLANT, and Commander Naval Reserve Intelligence Command.

In August of 1987, Captain Kelley was selected as a Canvasser Recruiter Officer, and he reported to Naval Reserve Readiness Center in Houston, Texas. He was later reassigned to the Naval Reserve Recruiting Command Detachment THREE, Dallas, where he served as the Department Head for Enlisted Programs. In September of 1994, he reported to the Bureau of Naval Personnel, as the Branch Head for Total Force Recruiting Policy. He was then transferred to the Chief of Naval Reserve Operations as an Assistant for Manpower Policy. In May of 1997, Captain Kelley was assigned as the Officer in Charge, Naval Reserve Recruiting Command Detachment FIVE, Washington, DC. Last November, he became the Commanding Officer of Naval Reserve Recruiting Command Area Five, which was the re-designation of Detachment FIVE to area status.

This distinguished career has been celebrated with numerous awards, including, but not limited to, the Meritorious Service Medal (three awards), Navy Commendation Medal (two awards), Meritorious Unit Commendation Ribbon (two awards), and the National Defense Service Medal (two awards). Additionally, he is considered to be a Navy Expert Rifleman and Navy Expert Pistol Shot.

Mr. Speaker, I ask that this 107th Congress join Captain Kelley’s wife Judy, and his children, Ryan, John, Kevin, and Megan, as he retires from the United States Naval Reserves.

CONGRATULATIONS, ALEXANDER CHRISTOFIDES

HON. DONALD M. PAYNE OF NEW JERSEY IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. PAYNE. Mr. Speaker, I would like to ask my colleagues here in the U.S. House of Representatives to join me in honoring an outstanding individual. Mr. Alexander Christofides, who was chosen to receive the Commissioner’s Citation, the Social Security Administration’s highest honor award.

This prestigious award is presented to those select employees who have made exceptional contributions to gaining agency-wide recognition. Based on Mr. Christofides’ outstanding accomplishments and exemplary performance, he was chosen for this high honor. Mr. Christofides was selected based on his outstanding performance as an Operations Supervisor in the Clinton Hill District Office. He won praise for his innovative efforts in regard to service delivery to the customers of his District Office, which resulted in reduced waiting times and speedier claims processing. Furthermore, it was Mr. Christofides’ extraordinary leadership and motivational skills which enabled his entire staff to work together for the public good, in a true spirit of teamwork, towards a shared goal.

Mr. Speaker, Alexander Christofides embodies the finest tradition of government service. We are proud of his dedication to his work, his problem-solving ability and the high standards of excellence he has set in the workplace. Let us take this opportunity to extend our appreciation and congratulations to Mr. Christofides and to wish him continued success. We are indeed fortunate to have a man of his caliber serving in the Social Security Administration.

WHITWELL MIDDLE SCHOOL HOLOCAUST MEMORIAL

HON. BENJAMIN A. GILMAN OF NEW YORK IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. GILMAN. Mr. Speaker, I rise today to discuss a moving article from the Washington Post, which I request to be inserted and printed in the RECORD at the end of my statement. The article, entitled “Changing the World One Clip at a Time,” by Dita Smith, describes a most unusual, uplifting tribute to the 6 million victims of the Holocaust by a class of Tennessee Eighth-graders and their teachers. In 1998, the students of Whitwell Middle School, together with two dedicated teachers, Mr. David Smith, and Ms. Sandra Roberts, took it upon themselves to collect 6 million paper clips and turn them into a Memorial Sculpture in commemoration of the victims of the Holocaust. What made the ambitious project even more unique was the fact that it was conceived in a very homogeneous white, Christian town of just 1,600.

In fact, the project didn’t even originate as a project, but rather, an intimate extra-curricular course to educate the predominantly uniformed students about the tragedy of the Holocaust. This voluntary after-school course had such a profound impact on the small-town students, that they decided to take action. The eighth-graders derived their idea from the Norwegians, who, during World War II, pinned paper clips to their lapels to express solidarity with their fellow Jewish Citizens.

Inspired by this gesture, the students set up their own web page asking for donations of paper clips. Their initiative quickly caught fire, and what began as a local cause, soon became an international phenomenon.

The students were overwhelmed by the pouring of all sorts of paper clips from all over the world. They even received a donation from President Clinton.

To date, the students have collected 23 million paper clips, well surpassing their 6 million goal.

For the last leg of the project, the students have determined to find the necessary funding
for an authentic German Holocaust era railroad car in which to load and display their paper clips and countless letters. I have worked closely with Nancy GallerMalta, the Educational Director, and Rabbi Justin Schrader, the headmaster, at Rockland County Hebrew High School to help them see this project through to completion. Their task is a daunting one, but judging by the tenacity exhibited by the students, thus far, I have every reason to be optimistic.

I invite my colleagues to help the Whitwell Middle School realize their noble goal, and in the process, spread their vital message of tolerance and compassion and to remember this devasting, inhumane chapter of world history.

CHANGING THE WORLD ONE CLIP AT A TIME

(By Dita Smith, Washington Post Staff Writer)

WHITWELL, Tenn. — It is a most unlikely place to build a Holocaust memorial, much less one that would get the attention of the president, that would become the subject of a book, that would become an international contest for its 20 to 25 places. They’ve become used to being interviewed by local television stations. Their foreign correspondents to survive; Peter had written his book, that would become an international bestseller, about what intolerance can wreak. The Whitwell story intrigued him because the Holocaust had never been part of the middle school’s curriculum and was mentioned only tangentially in the second grade as part of a unit on American history. For two German journalists living in Washington, D.C., stumbling across the Whitwell Middle School, the after-school computer expert, set up a Web page asking for donations of paper clips, one or two, or however many people want to contribute.

A few weeks later, the first letter arrived. One Lisa Sparks from Tyler, Tex., sent a handful. Then a letter landed from Colorado. By then, the group had assembled 100,000 clips. It occurred to the teachers that collecting 6 million paper clips at that rate would take a lifetime.

What gripped the eighth-graders most as the community assembled 100,000 clips was the sheer number of dead. Six million. The Nazis killed 6 million Jews. Can anyone really imagine 6 million of anything? They did calculations: If 6 million decades were laid end to end, the line would stretch from Washington to San Francisco and back.

One day, Roberts was explaining to the class that there were some “unfortunates” in 1940s Europe who stood up for the Jews. After the Nazis invaded Norway, many courageous Norwegians defied their Jewish fellow citizens by pinning ordinary paper clips to their lapels. One girl—nobody remembers who it was—said: Let’s collect 6 million paper clips and turn them into a sculpture to remember the victims. The idea caught on, and the students began bringing in paper clips, from home, from aunts and uncles and friends. Smith, as the school’s computer expert, set up a Web page asking for donations of clips, one or two, or however many people want to contribute.

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HELP FROM AFR

Unexpected help came in late 1999 when two German journalists living in Washing-ington, D.C., stumbled across the Whitwell Web site. Peter Schroeder, 59, and Dagmar Schroeder-Hildebrand, 58, had been doing research at the U.S. Holocaust Memorial Mu-seum when they were sent to Frankfurt to interview. Schroeder-Hildebrand was au-thor of “I’m Dying of Hunger,” a book about a camp survivor who devised imaginary din-ner menus to console her. “The Good Fortune of Lena Lieba Gitter,” about a Viennese Jew who escaped the Nazis and de-served her civil rights.

The Whitwell Web site came up during a routine search under “Holocaust.” The idea of American children in a conservative Christian community creating paper clips to remember the victims intrigued the couple. They called the school, interviewed teachers and students by tele-phone, and arranged for the nine newspapers they work for in Germany and Austria. Whitwell and the Schroeders were hit with a blizzard of paper clips from the newspapers, which had the first two weeks of March last year to visit the Holocaust Museum. They went home carrying 24,000 letters, 10 churches and a collection of fast-food joints sprinkled along the main drag. It was a thriving coal town until 1962, when the last mine closed. Some of the cottages built by the mining companies still stand, their paint now chipped and their cluttered porches sagging. Trailers have replaced the houses that once exemplified the town’s success. The Southerners express solidarity with their Jewish neighbors to survive; Peter had written his book, that would become an international bestseller, about what intolerance can wreak. The Whitwell story intrigued him because the Holocaust had never been part of the middle school’s curriculum and was mentioned only tangentially in the second grade as part of a unit on American history. For two German journalists living in Washington, D.C., stumbling across the Whitwell Middle School, the after-school computer expert, set up a Web page asking for donations of paper clips, one or two, or however many people want to contribute.

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HELP FROM AFR

Unexpected help came in late 1999 when two German journalists living in Washing-
Buccaneers, the Indianapolis Colts and the Dallas Cowboys. So many clips in memory of specific Holocaust victims have come in that one thing has become clear: we are there, and that the task is daunting.

WHITWELL’S LEGACY

Whatever happens, for generations of Whittwell eighth-graders, a paper clip will never again be just a paper clip, but instead carry a message of patience, perseverance, empathy and tolerance. Roberts, asked what she thought she had accomplished with the project so far, said: “Nobody put it better than Laurie Lynn [a student in last year’s class]. She said, ‘Now, when I see someone, I think before I speak, I think before I act, and I think before I judge.’” And Roberts adds: “That’s all I could ever hope to achieve as a teacher.” She gives this week’s assignment: “Tomorrow, I want you all to go, and sit next to a person at lunch whom you never talk with, a person that nobody wants to sit with at lunch, I want you to sit next to one of those people in the hall and say: Hi! What’d you do last night? Now, don’t make it obvious—they may know that it’s just an assignment. That would hurt.” Drew pipes up: “Well, I’ve already tried that, but that kid—that, you know, he just sits there and stares, what can I do?” “Keep at it—don’t give up,” says Roberts.

INTRODUCTION OF ECONOMIC DEVELOPMENT INITIATIVES FOR RURAL AMERICA

HON. JOHN M. MCHUGH
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. MCHUGH. Mr. Speaker, as a life-long resident of Northern New York, I have watched the 23rd Congressional District thrive as a bustling arena of agricultural production, aluminum processing, automobile parts fabrication, paper-making, tourism and textile manufacturing.

Regrettably, in the last decade or so, the trends have been altered dramatically and the manufacturing sector—particularly in the Northeast—has diminished considerably. Furthermore, our small family farmers have seen a dramatic decline in the price they receive for their hard-earned production, forcing many of them to abandon their beloved way of life. The statistics, unfortunately, bear out this view; earlier this month it was reported that Northern New York continues to have the State’s highest unemployment rate. While the unadjusted state unemployment rate was 7 percent and the national rate was 4.1 percent, the rate in the ten counties in my rural Northern and Central New York District ranged as high as 9.1 percent.

Mr. Speaker, we are a proud and independent people who have long relied on our ingenuity and integrity to make our way through life. While we have accomplished much through our resourcefulness, there is more that can, and must, be achieved to return greater prosperity to what we call “God’s country.” That is why I rise today to introduce a legislative package of rural economic development initiatives that I believe will create additional incentives to bring new business and industry opportunities, and the attendant job creation—to our rural communities.

First, the use of high-speed Internet access is no longer limited to the wealthy or so-called computer techies. It has fast become a mainstay of everyday life, particularly in the business world. Accordingly, the first measure I am introducing, the Rural America Digital Accessibility Act, contains four incentives to help bridge the digital divide in rural America.

The technology bond initiative would provide a new type of tax incentive to help state and local governments invest in telecommunications structures and partner with the private sector to expand broadband deployment in their communities, especially underserved rural areas. The broadband expansion grant initiative complements these bonds by utilizing grants and loan guarantees in underserved rural communities to accelerate private-sector deployment of high-speed connections so that all residents can connect to the Internet with a local, rather than a long-distance, phone call. The third initiative targets funding for research to increase rural America’s broadband accessibility and make it more cost-effective.

With six four-year universities and colleges and seven two-year colleges within my District boundaries, it makes sense for us to tap the expertise of our nation’s educators to assist in our endeavors. Accordingly, the fourth incentive will help small- and medium-sized businesses connect with educational institutions that can provide technological assistance designed to improve the business’ productivity, enhance its competitiveness and promote economic growth.

Second, to help our farm community, I am introducing the Agricultural Producers Marketing Assistance Act. This measure would establish Agricultural Innovation Centers on a demonstration basis and provide desperately needed technological expertise to producers in forming producer-owned, value-added endeavors. It would also help level the financial playing field for producers by providing a tax credit for eligible farmers who participate in these activities. In this way, farmers and producer groups can earn more by reaching up and down these activities. In this way, farmers and producer groups can earn more by reaching up and down.
Another incentive involves an expansion of the work opportunity tax credit to include small businesses located in, and individuals living in, communities experiencing population loss and low job growth rates such as those found in rural Northern and Central New York. Approximately 100 such communities would be designated, subsidizing some 8,000 jobs in each area.

Mr. Speaker, when employees face layoffs or the shutdown of their place of employment, thereby losing some or all of their family income, the one thing that provides them some small sense of security is severance pay. While this is without a doubt a welcome helping hand in a time of need, unfortunately, the recipients often lose a third of their severance pay to taxes because they are pushed into a higher tax bracket. My legislation excludes from gross income up to $25,000 of any qualified severance payment, limited to payments of $150,000 or lower.

When a company that employs 100 or more workers makes the decision that it can no longer keep its business open or must reduce its workforce, the Worker Adjustment and Retraining Notification, or WARN, Act requires 60 days advance notice of a major layoff or plant closing. As part of the notification requirement, current law states that notice be served upon, among others, the applicable State’s dislocated worker office, if elected official of the appropriate unit of local government. I believe we must expand the notification process to include, as well, the appropriate Federal- and State-elected officials, i.e., U.S. Representatives and Senators and State Legislators. The expansion of my legislation serves two purposes: (1) to alert these officials to the situation and the impact it will have on workers and the community and (2) to provide these officials with the opportunity to assist in determining if State and/or Federal resources are available and can be utilized to prevent closure or layoffs and the loss of employment opportunities. As publicly-elected officials, we have access to many avenues that may lend some small sense of security is severance pay. While this is without a doubt a welcome helping hand in a time of need, unfortunately, the recipients often lose a third of their severance pay to taxes because they are pushed into a higher tax bracket. My legislation excludes from gross income up to $25,000 of any qualified severance payment, limited to payments of $150,000 or lower.

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am taking in a long line of legislative initiatives designed to assist our communities manage the wide-ranging challenges faced by rural America in the 21st century.

REMEMBERING WAYNE CONNALLY

HON. RALPH M. HALL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. HALL of Texas. Mr. Speaker, I rise today to recognize the late Texas Senator Wayne Connally, my friend and colleague with whom I served in the Texas State Senate, who died on December 20. Wayne was a member of the famous Connally political family and the brother of the late Governor John Connally and Judge Merrill Connally—and was an esteemed public servant in his own right.

Wayne was born and raised in Floresville, Texas, and educated in public schools in Floresville and San Antonio. He attended the University of Texas at Austin before enlisting in the U.S. Army Air Corps during World War II, after which he ranched in his native region. He viewed public service as a tenet of good citizenship and was elected to the Texas House of Representatives in 1964 and elected to the Texas Senate two years later. He represented Senate District 21 from the 59th through the 62nd Texas Legislatures and was honored by his peers as “Governor for a Day” on October 7, 1971. I served with Wayne in the Texas Senate. He was a terrific Senator—totally dedicated and, determined to represent his District and the State of Texas. Wayne was also so very capable of friendship, and he was always responsive to anyone in need.

Wayne’s over-riding goal was to uphold integrity and responsibility in government. He worked with his brother, Governor Connally, to create the first upper-level higher education institution in Laredo in 1970, the first step toward establishing Texas A&M International University in 1993.

A tall, imposing figure who spent his life working as a rancher and a public leader, Wayne embodied the Texas persona—and he leaves behind a legacy of faithful service to the people of his native state that he so loved. He will be missed by his many friends and family, including his children, Wyatt, Pamela and Wesley; four grandchildren; his brother, Merrill Connally; and sister, Blanche Kline.

The Texas State Senate introduced a resolution on March 19, Wayne’s birthday, recognizing his many contributions during his years of public service and his devotion to the State of Texas. Mr. Speaker, as the House adjourns today, I ask that the colleagues from Texas and in the Congress join me in also paying tribute to this outstanding American, the late Wayne Connally.

CONGRATULATIONS TO MRS. AUDREY WEST

HON. DONALD M. PAYNE
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. PAYNE. Mr. Speaker, I would like my colleagues here in the U.S. House of Representatives to join me in paying tribute a very special person. Mrs. Audrey West, who will be honored at a Gala Retirement Celebration on Friday, June 29, 2001 by the Newark Pre-school Council, Inc. Board of Directors and Head Start Policy Council for her eleven years of dedicated service.

Audrey West began her Head Start career in September 1990. She has brought a wealth of administrative experience in providing social services and human development strategies to the operational goals of the Newark Preschool Council. Mrs. West’s leadership encompasses a broad range of knowledge, expertise, mobilization skills and community strengthening approaches, which were vital to the successful implementation of new programs demonstrating the mission of the Newark Preschool—to prepare our children to enter kindergarten READY TO READ. As the Executive Director of the Newark Preschool Council, Mrs. West has led an agency that is on the cutting edge of the national movement to develop family advocacy and sound educational beginnings for our children as they begin their successful journeys toward good citizenship. Mrs. West’s accomplishments—role modeling and mentorship certainly serve as an outstanding example of generosity and community involvement.

A native of Trenton, New Jersey, Audrey West received her Bachelor of Arts Degree from Howard University, Washington, D.C. Ms. West holds a Master’s Degree in Public Administration from Rutgers University. She served ten years as the Director of the Newark Division of Public Welfare (1988–1998) and ten years as the Deputy Director and Director of the New Jersey Division of Public Welfare in the Department of Health and Human Services (1978–1988). A true pioneer, she was the first African American to serve in these positions. Audrey West was also Special Assistant to the Commissioner in the New Jersey State Department of Personnel (1988–1990).

Mr. Speaker, we in New Jersey are so proud of Mrs. West and it is a pleasure to share the insights of a post-modern preacher and a veteran, Reverend Virginia C. Hoch, concerning Memorial Day patriotism. In order to share Rev. Hoch’s thoughts with my colleagues, I request that her remarks be inserted and printed in the RECORD at the end of my statement.

Reverend Hoch delivered this moving tribute for the Memorial Day Observance in the Go- shen, NY, United Methodist Church, on May 20, 2001. She spoke eloquently of her thoughts of the proper way to commemorate Memorial Day. Rev. Hoch contrasted, what she termed, “Patriotic Patriotism” with “Prophetic Patriotism.” The former, she described as exhibiting only the pathos of war and elevating the gore of the battlefield to idolatrized levels. The latter, she explained as working for a vision of the nation which embraces the achievements, the potentials, and diversities of our inhabitants, and in which the fortunate share their blessings with those whose lives seem unblessed.

Reverend Hoch, in her sermon, discussed her own personal, familial anecdotes. She spoke of her father’s experiences as a B–17 pilot in the then U.S. Army Air Corps, and his numerous military honors, including the Air Medal, the Theatre Medal, and the Distinguished Flying Cross. However, she noted how he gave up his career in the Air Corps when he broke formation to save the lives of his crew due to the failure of his aircraft’s oxygen system. Reverend Hoch brands this action as a form of “Prophetic Patriotism” not because he disobeyed an order, but because he put the lives of others over his own.

Reverend Hoch also shared the lessons she gained as a flight nurse in the U.S. Air Force during the Vietnam Conflict. Having witnessed first-hand the horrors of battle, she passionately deplored the glorification of war, and the tendency to desensitize ourselves to human casualty.

Reverend Hoch’s underlying message is an important one. She challenged her congregation to substitute wisdom for weapons, choose diplomacy over deployment, and to prefer peace over power. She did not advocate, by any means, forgetting the sacrifices of our countrymen, but rather, judging and questioning decisions to engage in war. Rev. Hoch
My father was a decorated B-17 pilot in the then US Army Air Corps, receiving the Air Medal, the Theatre Medal, and the Distinguished Flying Cross. He was a lieutenant, stationed with the 360th Bombardier Group of the 8th Air Force in Thurleighe, England. He flew 35 missions, returning one time with 69 shrapnel holes in his craft. His flight log was not enthused.

Since Nam we have seen the "sterile" wars in Granada, the Persian Gulf, and Bosnia. We have watched on TV as missiles travelled as if they were blips on a video-game screen, and we know now that our souls that the "hits" were counted in human lives. We still harbor a patriotism of pathos—that pathetic allegiance which believes that if we are there, then we belong, and all losses are okay. "War is hell" declared Churchill, but to many, war still has all the allure of a video arcade to young boys on holiday.

When providing expansive coverage of breaking news, Bill has always kept his broadcasts by asking his listeners, "Do Something Positive Today." His bright outlook on life and contagious optimism inspired TMJ4 to feature him in a segment called "Positively Milwaukee," where he focuses on people in the Milwaukee area whose actions positively impact our community. Bill has not only inspired others to follow his advice, but he has also practiced what he preaches. He has been a part of the TMJ4 newsroom for nearly 29 years and has had a profound impact on the lives of the people of Milwaukee. Bill Taylor is "Positively Milwaukee."

Bill has won numerous Milwaukee Press Club awards and American Bar Association certificates. In addition, he received a regional Emmy nomination for his work on TMJ4–TV. He has set an extremely high standard for those who will follow him in the years to come, and he will be deeply missed both by his peers and his viewers. I am honored to know Bill Taylor for his enormous contributions to Milwaukee and wishing him well in the future.
CONGRATULATING JANICE HAHN ON HER SWearing-IN AS COUNCILWOMAN IN THE CITY OF LOS ANGELES

HON. JANE HARMAN OF CALIFORNIA IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Ms. HARMAN. Mr. Speaker, I rise today to congratulate my friend, Janice Hahn, who will be sworn in this weekend as Councilwoman representing the 15th District of the City of Los Angeles. There are few public servants as well suited as Janice to represent this diverse and unique district, much of which just happens to overlap with my own 36th District congressional seat.

A life-long resident of Los Angeles, Janice grew up in a family that honored and respected the notion of public service. Her father, the late Supervisor Kenneth Hahn, brought new meaning to the office of County Supervisor. He worked tirelessly for his constituents and bestowed this ethic to his daughter, who will now represent many of the same constituents as a member of the Los Angeles City Council.

The same ethic was imbued in her brother as well. LA City Attorney Jim Hahn, the incoming mayor of the city of Los Angeles, will also be sworn in this weekend and I also congratulate him.

Janice ran a race that emphasized her responsiveness to community concerns and her professional experiences tell why. Janice worked as Director of Community Outreach for Western Waste Industries, Vice President for Prudential Securities in Public Finance, and Public Affairs region manager at Southern California Edison. She also served as an elected member of the Los Angeles City Charter Commission and was the Democratic nominee for Congress in 1996, when she waged a hard-fought and honorable campaign to succeed me in the 36th District.

Janice will serve in the outstanding tradition of her father and will continue to make contributions on behalf of her constituents and the city of Los Angeles.

I am honored to join her family and friends in wishing her well in her new elective office.

TRIBUTE TO THE LATE JOHN FERRARO

HON. HENRY A. WAXMAN OF CALIFORNIA IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. WAXMAN. Mr. Speaker, today the Los Angeles City Council Chamber will be dedicated in the name of John Ferraro, a highly respected and beloved City Council member who died on April 20th, 2001.

John made a name for himself long before he joined the City Council in 1966. The youngest of eight children, he won an athletic scholarship to the University of Southern California where he played football for the USC Trojans. He was an all-American tackle and played in Rose Bowl games in 1944, 1945, and 1947. He was named to the National Football Foundation Hall of Fame in 1974, the USC Hall of Fame in 1995, and the Rose Bowl Hall of Fame in 1996. More recently, he was named to the Best College Football Team of the Century by the Los Angeles Times.

After earning a Bachelor of Science Degree in Business Administration, John established a successful insurance brokerage firm in Los Angeles and became active in Democratic politics. In 1966 he was appointed to serve on the Los Angeles City Council after Council member Harold Henry died. He subsequently won nine elections and was serving his thirty-fifth year when he passed away. He served as City Council President longer than anyone in Los Angeles history.

John’s political skills were sharply honed and he made important contributions to the City of Los Angeles, including his crucial role in bringing improvements of the Los Angeles Zoo and drawing the 1984 Olympics and the Democratic National Convention 2000 to Los Angeles.

In addition to serving on the City Council, John served as President of the League of California Cities and Independent Cities Association, and he served on the boards of the National League of Cities, the Museum of Contemporary Art, the Autry Museum of Western Heritage and the Hollywood-Wilshire YMCA.

John’s dedication to public service brought him numerous awards, including the Central City Association’s 2000 Heart of the City Award, the L.A. Headquarters Association 2000 Enduring Spirit of Los Angeles Award, the USC General Alumni Association’s Asa V. Call Achievement Award, the Los Angeles Marathon’s 1996 Citizen of the Year Award, the All City Employees Benefits Service Association 1995 Employee of the Year, and the GTE State Forum Award for Community Service.

John’s loss has been felt deeply by the residents of Los Angeles and the Council members who were fortunate to serve with him. He never grandstanded. He didn’t expect credit for his accomplishments. He worked quietly and effectively to achieve his goals. He was very simply a decent man and skilled advocate for the people of Los Angeles. The Dedication of the Council Chamber will help keep his memory and the generous contributions he made alive as a model for the future.

THANKING LANCASTER UNITED FOR LIFE

HON. JOSEPH R. PITTS OF PENNSYLVANIA IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. PITTS. Mr. Speaker, I would like to recognize and congratulate Lancaster United for Life. Lancaster County, Pennsylvania, which is, and always has been a strong-to-the-pro-life, mobilized, community, and when an organization announced that it intended to perform abortions there. Recently, the Pennsylvania Supreme Court refused to hear an appeal of a Commonwealth Court decision upholding the law life in Lancaster County. While the cause never ends, this is a major victory for Lancaster County. I want to thank all the volunteers and donors who worked so hard to make this possible.

ON THE DEATH OF PATRICK B. HARRIS, FORMER STATE LEGISLATOR AND CIVIC LEADER OF SOUTH CAROLINA

HON. LINDSEY O. GRAHAM OF SOUTH CAROLINA IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. GRAHAM. Mr. Speaker, I am saddened to report to the House of Representatives the death of Patrick B. Harris of Anderson, South Carolina. He is survived by his wife of more than 60 years, Elizabeth.

I had the distinct honor of serving with Mr. Pat in the South Carolina House of Representatives where he served for more than twenty years. It truly was an honor to serve with him as he was a tireless advocate on behalf of senior citizens and people with mental illness.

Among his numerous accomplishments in public office were the creation of a property-tax homestead exemption for people older than sixty, creating a sales tax exemption on prescription drugs for those age 50 and older, making elder abuse a crime, and allowing people age 65 and older to attend state colleges and universities tuition-free.

Born in Mount Carmel in 1911, Mr. Pat attended Anderson Boys High School where he played both football and baseball.

He began work when he left Presbyterian College in Clinton, South Carolina to work in a textile mill during the Great Depression. He also owned and operated a local gas company and for many years was involved in real estate.

Mr. Pat was awarded numerous honors and awards during his life including an honorary Doctor of Laws degree from Erskine College and the Order of the Palmetto from former Governor Carroll Campbell.

With the passing of Pat Harris South Carolina has lost an extraordinary statesman and gentleman. I’m sure other Members of the House join me in sending our condolences to his family and loved ones.

ON THE PEOPLE’S REPUBLIC OF CHINA’S ROLE IN THE EXECUTION OF PRISONERS AND TRAFFICKING OF THEIR ORGANS

HON. FRANK R. WOLF OF VIRGINIA IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. WOLF. Mr. Speaker, I want to share with you this statement presented before a hearing at the House International Relations Subcommittee for Human Rights and International Operations on June 27, by Wang Guoji, a physician from the People’s Republic of China. Mr. Wang was a skin and burn specialist at the Paramilitary Police Tianjin General Brigade Hospital. Mr. Wang writes that his work ‘required me to remove skin and corneas from the corpses of over one hundred executed prisoners, and, on a couple of occasions, victims of intentionally botched executions.’

In a very graphic example, Mr. Wang describes how he harvested the skin off of a man who was still living and breathing.
We had to work quickly in the crematorium, and 10-20 minutes were generally enough to remove all skin from a corpse. Whenever there was passed over to the crematorium, we removed skin from five to eight times a year, the hospital would send a number of teams to execution sites to harvest skin. Each team could process up to 800 samples, and that was as much as we could do. It was demanded by both our hospital and fraternal hospitals. Because this system allowed us to treat so many burn victims, our urology department became a self-supporting and profitable department in Tianjin.

Our hospital had to receive organ transplant reports. We were one of the earliest hospitals in China to receive these organs. The urology department thus began its program of kidney transplant surgeries. The complexity of the surgery called for a price of $250-$300 per kidney. With such high prices, primarily wealthy or high-ranking people were able to buy kidneys. If they had the money, the first step would be to find a donor-recipient match. Once a donor was confirmed, our hospital would send in a joint meeting with the urology department, burn surgery department, and operating room personnel. The two teams would discuss the organ transplantation plan and the suitability of the recipient for the transplant.

Once the donor was confirmed, our hospital would send an organ to the recipient hospital. After receiving a heparin shot to prevent blood clotting to the prisoner, a bailiff removed skin in a small room next to the crematorium. Since our director had business ties with organ transplant operations, he was able to obtain skin from over a hundred prisoners in over a dozen sites and crematoriums. Whatever impact I have made in the lives of burn victims and transplant patients does not excuse the unethical and immoral manner of extracting organs.

After this incident, I have had horrible, recurring nightmares. I have participated in a practice that serves the regime's political and economic goals far more than it benefits the patients. I have given sam-eath-row prisoners. The policeman escorting us told the prisoners that we were there to check their health conditions; therefore, the prisoners would pass blood samples or their organs might be up for sale. Out of the four samplings, one basic and sub-group blood match was found for the recipient. After this, the kidneys were deemed fit for transplantation.

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But with US government funds, Internews used state media as a propaganda weapon to foment hatred and violence in the Balkans. And in 1996, the New Bronx Employment Service was inaugurated, followed by the Neighborhood Housing Service/MHHC Home Maintenance Training Center in 1998. And now MHHC is planning to develop a community center that will house programs. Property rights were bought by a Boys and Girls Club, affordable child care and a state of the art center for computer training.

Mr. Speaker, the Mount Hope Housing Company, Inc. is another fine example of a community organization dedicated to empowering Bronx residents and revitalizing the community, using a comprehensive, self-sustaining and long-term approach. Its success reminds all of us of the contributions local organizations have made to improving the lives of citizens in their respective communities.

Mr. Avelino, and my colleagues to join me in paying tribute to the Mount Hope Housing Company, Inc. and in wishing them continued success.

CONGRESSIONAL TESTIMONY OF DAVID HOFFMAN

HON. MIKE THOMPSON OF CALIFORNIA IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. THOMPSON of California. Mr. Speaker, I rise today to request that the testimony given by David Hoffman, President of Internews in Arcata, CA, be submitted into the CONGRESSIONAL RECORD by David Hoffman, President, Internews.

Electronic media are the most powerful force for social change in the world today. As Americans, we live and breathe in the information age. Media are central to our economy, our culture, our political system and our everyday lives. But in many countries around the world, free media can be a means to be taken for granted. In Russia, President Putin has prosecuted Victor Gusinsky, whose influential television network has been critical of the government. Prime Minister Kuchma has been accused of ordering the murder of a dissident journalist. In China, the government selectively censors Internet web sites that challenge the official version of events. In Iran, dozens of newspapers have been banned and their editors thrown in jail. In Zimbabwe, journalists have been beaten and jailed. In Kazakhstan and Azerbaijan, independent television stations have been suppressed.

And of course, former President Milosevic used state propaganda to foment hatred and violence in the Balkans. But with US government funds, Internews and other NGOs were able to provide critical support by broadcasting in Serbia and Bosnia that formed the nucleus of opposition to the Milosevic regime. In Serbia and many countries around the world, independent media have been on the front lines in the fight for freedom and democracy.

With significant funding from USAID, Internews helped develop 1500 independent, non-governmental broadcasters in 23 countries. During the past ten years, we have also trained 16,000 media professionals.

IMPORTANT OF OPEN MEDIA

In all these countries, we learned that open media are essential for holding free and fair elections, for exposing corruption and human rights abuses, for allowing the free exchange of information and uncensored news outlets, therefore, should be at the top of our foreign policy agenda.

America’s goal should be the development of a glowing fire that everyone can participate in the global marketplace of ideas, where everyone has access to multiple sources of information, and that led to the official language of the media is kept to a minimum, where the poor, minority, women and every group that has been disfranchised in the past will have a voice.

INDEPENDENT MEDIA IN THE DEVELOPING WORLD

This Committee and the Congress can be proud of their support for open media in the former Soviet Union, in the Balkans, and most recently in Indonesia. But there are many areas of the world where open media have yet to take hold. In Africa, in particular, independent media are just in their infancy. We urge this Committee to continue and expand its support of open media in developing countries.

We would like to share the key lessons that Internews has learned in its nearly twenty years of experience in the field of international media, and make one recommendation for the Committee to consider this year.

First, local indigenous media are the best counterweight to repressive regimes everywhere. They should be supported as an integral part of American foreign policy.

Second, support for local broadcast media is the most effective means for building open, civil societies and healthy market economies in line with democratic ideals. This support needs to be sustained for the long run until stable economies and civil societies are in place.

And third, in the developing world, locally-produced radio programs and other media coverage are unparalleled in their potential to effectively educate mass populations about urgent social problems such as HIV/AIDS.

We would urge the committee to give special attention to this last point.

ROLE OF MEDIA IN COMBATTING HIV/AIDS IN AFRICA

At a time when the incidence of HIV/AIDS has reached catastrophic proportions in Africa, there is an important opportunity to harness the power of the media to reduce the spread of this disease. Over 17 million Africans have died of AIDS since the epidemic began in the late 1970s. In at least eight sub-Saharan African countries, on the general population is 15% or higher.

Yet local news coverage of this epidemic is often seriously flawed. African journalists do not usually specialize in one particular area, so their knowledge of the issue may be shallow and the language they use may inadvertently further stigmatize victims of HIV/AIDS. As the Internews cover story concluded, “Ignorance is the crucial reason the epidemic has run out of control.” By training local African journalists in how to effectively cover HIV/AIDS, women and every group that has been disfranchised in the past will have a voice.

Women in the developing world have a special role to play in changing public health practices and on a wide range of social issues.

In his book Development As Freedom, Nobel Prize winner Amartya Sen illustrates how increased literacy, education, job opportunities, property rights and representation for women directly translate into reduced infant mortality rates, lower birth rates, cleaner water, reduced crime and overall national economic growth.

If we want to see the less developed countries emerge from the morass of poverty, disease and chronic warfare, there is nothing more important we can do than increase the political and social influence of women. One way to increase the influence of women in the developing world is to open up opportunities for women in the media.

Let us train a new generation of women journalists, producers and media entrepreneurs in Africa. Let us develop the capacity of women’s NGOs to utilize the media to deliver their messages. Let us help start new radio programs that address the needs of women. For example, with a grant from the Office of International Broadcasting and Novelties, Internews helped develop the first radio program in Indonesia specifically targeted to a female audience. This type of assistance demonstrates the power to transform the continent. A democratic, open media in Africa is both a moral and a political imperative.

ABOUT INTERNEWS

Internews® is an international non-profit organization that supports open media worldwide. The company fosters independent media in emerging democracies, produces innovative television and radio programming and Internet content, and uses the media to reduce conflict within and between countries.

Internews programs are based on the conviction that vigorous and diverse mass media are essential for open society. Internews operates offices in Armenia, Azerbaijan, Georgia, Kazakhstan, Uzbekistan, Tajikistan, the Kyrgyz Republic, Russia, Ukraine, Belarus, Moldova, Kyrgyzstan, Tajikistan, and in Afghanistan. As a result, the media can educate those voices about the true nature of the HIV virus, we can begin to change the attitudes and practices that have allowed this disease to run out of control.

WOMEN AND MEDIA IN THE DEVELOPING WORLD

Women in the developing world have a special role to play in changing public health practices and on a wide range of social issues.
INTRODUCTION OF TRIBAL ENERGY SELF-SUFFICIENCY ACT

HON. NICK J. RAHALL II
OF WEST VIRGINIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. RAHALL. Mr. Speaker, in my role as the Ranking Democrat on the Resources Committee, today I am proud to be introducing the “Tribal Energy Self-Sufficiency Act” and am pleased to note that joining me as original co-sponsors are our colleagues DON YOUNG of Alaska, GEORGE MILLER of California, DALE KILDEE of Michigan, ENI FALEOMAVAEGA of American Samoa, NEIL ABERCRUMBIE of Hawaii, FRANK PALLONE, Jr., of New Jersey, ADAM SMITH of Washington, MARK UDALL of Colorado, BETTY McCOLLUM of Minnesota, and PATRICK KENNEDY of Rhode Island.

Native Americans have, by far, the highest percentage of homes without electricity. Many homes on Indian reservations have either no electricity or unreliable electricity. I find this appalling and unacceptable especially in light of the fact that at least ten percent of the energy resources in the United States are located on Indian lands. In a community which often receives lower than average wages, Native Americans pay a larger percentage of their income on energy needs than the rest of us.

In numerous instances Indian lands are criss-crossed with electricity transmission and distribution lines yet the Indian homes on those lands remain dark. Tribes often have no access to these lines and little authority over what energy they do receive. As we all know, this is not the case with numerous local governments in the rest of the country.

As the House of Representatives prepares to consider legislation to further advance a national energy policy, we must not forsake the sovereign tribes to which the United States has a trust responsibility. In this regard, the fundamental purpose of this legislation is to provide Indian Country with the tools it needs to achieve energy self-sufficiency.

When enacted, this legislation will go a long way to promote energy development of Indian lands where it is wanted and badly needed. The “Tribal Energy Self-Sufficiency Act” contains a multitude of provisions relating to the production of energy resources on Indian lands, the development of renewable sources of energy, and access by tribes to transmission facilities largely by building upon programs that are already in place.

Mr. Speaker, I have worked to draft this comprehensive energy bill with the Council of Energy Resource Tribes, the Intertribal Energy Network and numerous energy and tribal experts representing well over 100 Indian tribes. While this legislation was developed with a great deal of input from Indian Country, it does not purport to include every single proposal or idea that was advanced. Rather, this measure is intended to reflect those areas where interested tribes are largely in agreement with refinements made as it is considered by the committees of jurisdiction during the legislative process.

MOTION PICTURE PRODUCTION: TO RUN OR STAY MADE IN THE USA

HON. JOHN CONYERS, JR.
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. CONYERS. Mr. Speaker, I submit that the following article from the Entertainment Law Review, by Pamela Conley Ulrich and Lance Simmons, be placed in the CONGRESSIONAL RECORD.

MOTION PICTURE PRODUCTION: TO RUN OR STAY MADE IN THE U.S.A.

(Pamela Conley Ulrich and Lance Simmons)

“Bye, Bye American pie, drove in my Daimler to the movies to see a foreign-made flick; And good old actors were drinking whiskey and beer, singing this is the day, we’re unemployed here, this will be the day we’re unemployed here.

I. INTRODUCTION

Globalization profoundly impacts traditional ways of conducting business, and the entertainment industry is no immune from the new economic climate drastically changing the world. Could Hollywood become “Hollyhasbeen”? Will television and theatrical motion pictures shot in the United States go the way of the American car and American-made clothing?

Runaway production has caused serious labor issues, including that of thousands of workers and jobs. In 1998, twenty-seven percent of films released in the United States were produced abroad, and an estimated 20,000 jobs were lost in foreign countries. Lower exchange rates, direct government subsidies and lower labor wages enticed American production companies to film in foreign locations. The direct economic loss of runaway production was $2.8 billion. When coupled with the loss of ancillary business, the losses likely totaled $1 billion for 1998 alone.

The issue of the House Ways and Means Committee is to reverse the trend of American funds being spent outside the United States. Congress has already targeted at least $2 million in television and radio production grants to help the U.S. film industry. The American film industry is at a crossroads. If the U.S. is to reassert its position as a production center, it must address the problem of labor issues, including the dislocation of American citizens residing in the State of California, the State of New York, and in other States because of runaway production.

The fortunes of major Hollywood studios threaten to destroy a valuable national asset in the field of world-wide mass communications, which is vital to our national interest and security. If Hollywood is thus converted into an “obsolescent as a production center” and the United States voluntarily surrenders its position of world leadership in the field of theatrical motion pictures, the chance to present a more favorable American image on the movie screens of non-Communist countries in reply to the cold war attacks of our Soviet adversaries will be lost.

John “Jack” L. Dales, Executive Secretary of the Screen Actors Guild (‘‘SAG’’), and actor Charlton Heston also testified before the subcommittee.

“While examined and laid out, without evasion, all the causes [of runaway production]
we knew. Included as impelling foreign production were foreign financial subsidies, tax avoidance, lower production costs, popularity of authentic locales, frozen funds—all compelling reasons. We urged Congressional action in two primary areas: (1) fight subsidy with subsidy. Use the present 10 percent admissions tax to create a domestic subsidy; (2) taxes. The government considered a spread of five or seven years over which tax would be paid on the average, not on the highest, income for those years.

Despite our pleas, runaway production has continued to grow in importance, scope and visibility. Today it ranks among the most critical issues confronting the entertainment industry. It received increased attention in June 1999, when SAG and the Directors Guild of America ("DGA") commissioned a Monitor Company report, "The Economic Impact of U.S. Film and Television Runaway Production" ("Monitor Report"), that analyzed the quantity of motion pictures shot abroad and resulting losses to the American economy. In January 2001, concerns over runaway production were addressed in a report prepared by the United States Department of Commerce. The eighty-one-page study ("Department of Commerce Report") was produced at the request of a bipartisan congressional group. Like the Monitor Report, the Department of Commerce Report acknowledged the "flight of U.S. television and cinematic film production to foreign shores. Both reports quantify the nature and depth of the problem and warn of further proliferation if left unchecked.

Additionally, the media is bringing the issue of production to the attention of the general public. Numerous newspaper articles have focused on the concerns cited in the Monitor Report. For example, in The Washington Post, Warner Bros. president of production, Lorenzo di Bonaventura, explained the runaway production issue as follows:

For studios, the economics of moving production overseas are tempting. The 'Matrix' cost us 30 percent less than it would have if we shot in the United States. ... The rate of exchange is 62 cents on the dollar. Labor costs, construction materials are all lower. And they want us more. They are very embracing when we come to them.'

DI Bonaventura continued Warner Bros. received $12 million in tax incentives for filming "The Matrix" in Australia. This is a significant savings for a film that cost approximately $100 million to produce.

III. CAUSES OF RUNAWAY PRODUCTION

In the Department of Commerce Report, the government delineated factors leading to runaway film and television production. These factors have contributed to the "substantial transformation of what used to be a traditional and quintessentially American industry into an increasingly dispersed global industry." A. Vertical Integration: Globalization

Vertical integration is defined by the International Monetary Fund as "the increasing integration of economies around the world, particularly through trade and financial flows." The term also refers to "the movement of people (labor) and knowledge (technology) international boundaries."

Consequently, companies must now be productive and international in order to profit. Because companies are generally more interested in growth, they are often not loyal to communities in which they have flourished. Instead, they consider the bottom line in the process of making decisions.

Columbia is an excellent example of the conversion from a traditional U.S.-based company to a global enterprise. Columbia began in 1918 when independent producer Harry Cohn, his brother Jack and their associate Joe Brandt, started the company with a $100,000 loan. In 1926, Columbia purchased a small lot on Gower Street in Hollywood, California, with just two sound stages and a small office building. In 1929, Columbia's success led to the "talkie" feature, "The Donovan Affair," directed by Frank Capra, who would become an important asset to Columbia. Capra went on to form a production company, Columbia Pictures, such as "You Can't Take It With You" and "Mr. Smith Goes to Washington."

In 1966, Columbia attempt by the Banque de Paris et Pays-Bas, owner of twenty percent of Columbia, and Maurice Clairmont, a well-known corporate raider. The government of France, Columbia such as "Mr. Smith Goes to Washington."

In 1988, Columbia's share of domestic box office receipts fell to 3.5 percent and Columbia registered a $104 million loss. In late 1989, Columbia merged with Sony USA, Inc., a subsidiary of Japan's Sony Corporation, for the purchase of all of Columbia's outstanding stock. This acquisition apparently does not violate the amended Communications Act.

Following in Columbia's footsteps, other studios have globalized through foreign ownership. In 1980, Universal Studios, Inc. ("Universal"), previously the Music Corporation of America, was acquired by the additional Japanese electronics company Matsushita in 1991, and four years later it purchased its Seagram, a Canadian company headquartered in Montreal. In 1985, Australia media mogul Rupert Murdoch acquired 20th Century Fox. Sony acquired Columbia, Inc., was acquired by the additional Japanese electronics company Matsushita in 1991, and in 1997, Viacom acquired Paramount. Capra went on to form a production company, Columbia Pictures, such as "Mr. Smith Goes to Washington." D. Government Sweeteners

Canada is extremely aggressive in its application of both Federal and provincial subsidies to entice production north of the border. The government offers tax credits to compensate for salary and wages, provides funding for equity investment, and provides working capital loans. If the provider tax credits are offered, as well as incentives through the waiving of fees for parking, permits, location, and other local costs.

E. Exchange Rates

Because the U.S. dollar is stronger than Canadian, Australian and U.K. currencies, producers have more purchasing power when they opt to film abroad. As a result, producers are tempted to locate where the dollar has the most value. The Canadian, Australian and U.K. dollars have all declined by fifteen to twenty-three percent, relative to the U.S. dollar, since 1990.

IV. THE IMPACT OF RUNAWAY PRODUCTION

A. The Economic Impact

In total, U.S. workers and the government lost $10.8 billion to economic runaways in 1998. According to the Monitor Report, "$2.8 billion in direct expenditures were lost to U.S. workers and the government. As a result, producers are tempted to locate where the dollar has the most value. The Canadian, Australian and U.K. dollars have all declined by fifteen to twenty-three percent, relative to the U.S. dollar, since 1990.

B. Rising Production and Distribution Costs and Decreasing Profits

By the end of the 1990s, studio executives began to feel the pinch of rising costs. Despite aggressive cost-cutting, layoffs, strategic joint ventures and movement of production to foreign shores, rising production and distribution costs have consumed profits over the last decade. Production costs rose from an average of $28,8 million to $31.5 million. Distribution costs for new feature film releases more than doubled. The average motion picture cost $11.97 million to distribute, and by 1999, the costs rose to $24.33 million. At the same time, profit margins dropped. In 1997, profits decreased from 25 percent in 1987 to 19 percent in 1997, and Viacom's profits dropped from 13 percent in 1987 to less than 6.5 percent in 1997. According to Variety, Warner and News Corporation, parent of Fox, showed declining profits as well.

C. Technological Advances

According to the Department of Commerce Report, "[N]ew technologies and tools may well be contributing to the increase in the amount of foreign production of U.S. entertainment programs. Indeed, even if a foreign country had lower labor costs, it would have been prohibitively expensive to transport equipment and qualified technicians to produce a quality picture abroad. However, new technology is defeating that obstacle. Scenes shot on film must be transferred to a video or digital tape format; this process creates what is referred to as dailies. However, many foreign production centers are unable to instantly process and print the dailies. Nevertheless, technological advancement has led to the creation of high definition video, which, like dailies, offers immediate viewing capabilities approximating the visual quality of film. As the quality of high definition video continues to improve, producers will be free to shoot abroad regardless of whether the country offers film processing centers.
above, the Monitor Report calculated an additional $5.6 billion lost in indirect expenditures. Indirect expenditures include real estate, restaurants, clothing and hotel revenues, which are not realized. In addition to these private industry losses, the government lost $1.9 billion in taxes to runaway production. As opposed to the $10.3 billion lost in estimated labor expenditures, the losses will be between $13 and $15 billion in 2001.

B. The U.S. Production Drought

The Monitor Report stated that between 1980 and 1997, production which fell sharply behind the growth occurring in the top U.S. runaway production locations of Canada, Australia and the U.K. It stated that Australia and the U.K. grew at 26.4 percent annually in production of United States-U.S.-developed feature films, or more than three times the U.S. growth rate. Similarly, “Canada is growing at 18.2 percent annually in production of U.S.-developed television projects, growing at 18.2 percent annually in production of U.S.-developed television projects, or more than three times the U.S. growth rate.” During the same period, annual growth rates in the United States were 8.2 percent for feature films, and 2.6 percent for television.

C. Job Loss

Runaway production also impacts the U.S. labor market. It is estimated there are 270,000 jobs directly tied to film production. It is further estimated that 20,000 jobs were lost in 1998 alone due to runaway production. However, these statistics do not fully reflect the impact of economic runaway production on employment. They fail to account for spin-off employment that accompanies film production. It is estimated by the Commerce Department that the ripple effect of secondary and tertiary jobs associated with the industry might easily double or triple the number of jobs dependent upon the industry.

Regrettably, the growing economic impact, the Commerce Department acknowledges that at least $18 billion in direct and indirect export revenues and $20 billion in economic activity are generated by the industry annually.

D. Loss of Pension and Health Benefits

 Performers and others who work on foreign productions may lose valuable pension and health benefits. As provided in the SAG collective bargaining agreements, performers are entitled to receive pension and health contributions made to the plans on behalf of performers working on productions. Although SAG does allow for some pension and health reciprocity with the Canadian performers union, performers must negotiate this term into their contracts. More often than not, performers are unable to negotiate this benefit for work performed in Canada.

E. Cultural Identity

In 1961, Congress was warned that the trend of runaway production threatened to destroy a valuable “national asset” in the field of worldwide mass communications. As H. O’Neill Shank, John Lehners and Robert Gilbrese, who are not realized. In addition to the Monitor Report, the chance to present a more favorable American image on the movie screen would be forever lost. Although the Cold War was a reason to protect cultural identity, today U.S.-produced pictures are still a conduit through which our values, such as democracy and freedom, are promoted.

V. SOLUTIONS

A. The Film California First Program

California remains a leading force in the industry, and last year took a legislative step to remedy the problem of runaway production. The state passed a three-year, $45 million program aimed at reimbursing film costs incurred on public property. The Film California First Program is specifically geared toward increasing the state’s competitive edge in attracting and retaining film projects. To accomplish this goal, the legislation provides tax credits to production companies for filming in California, including offering property leases at below-market rates. This legislation should serve well in a most likely way they too will struggle with an issue of increasing economic importance.

B. Wage-Based Tax Credit

A proposal which should be patterned after a legislative proposal offered, but never advanced, in the 106th Congress. Specifically, this proposal called for a wage-based tax credit for targeted productions and provided:

1. a general business tax credit that would be a dollar-for-dollar offset against any federal income tax liability;
2. a credit cap at twenty-five percent of the first $25,000 in wages and salaries paid to any employee whose work is in connection with a film or television program substantially Produced in the United States and (3) availability of credit on a per-production basis for targeted film and television productions with costs of more than $500,000 and less than $10 million.

C. Future Solutions

To rectify the problems of runaway production, legislation at the local, state and federal levels is paramount. Over the past thirty years, the film industry has expanded beyond California to become the major engine of economic growth in states such as New York, Texas, Florida, Illinois and North Carolina. To achieve effective legislative remedies to this, a number of successful programs implemented by other nations. Maybe it is the inexorable result of a changing world. Regardless, the proliferation of foreign subsidies for U.S. film production, which is occurring at an increasing rate worldwide, raises troubling questions of fairness and equity. From a competitive standpoint, it appears as though the deck is stacked against a class of workers who seek to derive their livelihood from this industry but find their jobs have moved overseas. It is understandable that producers will take the opportunity to film abroad when the reduction in costs is as much as twenty-five percent. Consequently, ready for America’s workforce is to pass legislation that provides commensurate benefits in the United States.

It is apparent that a laissez-faire, market-oriented approach has failed the American worker. Unemployment is extraordinarily high with the creative community, leading to seventy percent of SAG’S 100,000 plus members earning less than $7,500 annually. This economic hardship is exacerbated by runaway productions. Thus, it is abundantly clear that legislative remedies attempting to more adequately level the playing field must be pursued. Amid encouraging signs that a bill of significant consequence is likely to pass Congress in the coming months, it is imperative that the creative community take a proactive position to ensure that the bill will provide domestic film production. It must use all resources to cure the concerns presented in the two reports outlined in this Article. Organizations, such as SAG, must work closely with Congress in designing a legislative approach to a global problem. It is important to remember the United States risks losing its economic advantage in a vital industry which carries with it enormous economic consequences. As noted in the Department of Commerce Report:

“If the most rapid growth in the most dynamic area of film production is occurring outside the United States, then employment, infrastructure, and technical skills will also grow more rapidly outside the United States, and the country could lose its competitive edge in important segments of the film industry.”

VI. CONCLUSION

Politics represents the art of the possible. The approach advocated in this Article should find a receptive ear in the halls of Congress for if nothing else than its simplicity. Timing is crucial. Left unchecked, the only certainty is continuing runaway production with the attendant of economic costs, lost jobs, and diminished tax revenues at all levels of government. In a time of waning economic growth and warning signs of dwindling surpluses and future economic weakness, including production incentives into any upcoming tax relief is essential to preserving the U.S. workforce in the American entertainment industry.

PERSONAL EXPLANATION

HON. JAMES H. MALONEY
OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. MALONEY of Connecticut. Mr. Speaker, on Tuesday, June 26, 2001, I was unavoidably detained and missed roll call No. 190. Had I been present, I would have voted No on roll call vote No. 190.

TRIBUTE TO THE CITY OF MURRIETA, 10TH ANNIVERSARY

HON. KEN CALVERT
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. CALVERT. Mr. Speaker, it is with great pleasure today to pay tribute to a wonderful, young city in my district as they prepare to celebrate their 10th Anniversary—Murrieta, California, a “Gem of the Valley.” Murrieta is an expansive valley covered with grasses and dotted with oak trees.

Incorporated as a city in July of 1991 after an overwhelming supportive vote, Murrieta has seen tremendous growth since its small beginnings as a sheep ranch. It was a young Don Juan Murrieta who first recognized the natural

Juan Murrieta who first recognized the natural
beauty and vitality of this California valley and bought 52,000 acres in 1873. As the years passed by, the city saw slow growth and finally a boom when the railroad came through. By 1890, almost 800 people lived in the valley. Unfortunately, by 1935 the city had grown only to some 1,200 and it found its population increase by a multiple of eight by 1991, to 20,000 residents, when Murrieta became an incorporated city. This year, as they celebrate their 10th Anniversary it finds itself the home of some 50,000 residents.

As a city and community, Murrieta has thrived with the greater control of its destiny over the last 10 years. That includes providing services from within the community instead of outside, such as police, fire and library systems of its own rather than contracting for those services.

In 10 short years, the City of Murrieta has seen its population and communities grow because of dedication to affordable housing, protecting the natural beauty of the valley, good schools, low crime and clean air. The city adopted its first General Plan after more than 50 public meetings to draft a vision of what the new city would become over the next several decades. The police department was created in 1992, the fire department in 1993 and the library system in 1998. Public services like these are what bind a city together along with the building of parks and recreational facilities and more. In fact, for their incredible progress as a city Murrieta has won numerous awards for innovation and performance.

Mr. Speaker, looking back, the city of Murrieta and its residents can hold their heads high with pride at what their once small town has become in only 10 short years. I wish to extend to them my congratulations as families, community leaders and business leaders gather on this Saturday, June 30th, to celebrate their 10th Anniversary. Congratulations to the Gem of the Valley! PERSECUTION OF THE MONTAGNARD PEOPLES IN VIETNAM HON. CASS BALLenger OF NORTH CAROLINA IN THE HOUSE OF REPRESENTATIVES Thursday, June 28, 2001 Mr. BALLenger. Mr. Speaker, today I am introducing a resolution concerning the persecution of the Montagnard peoples in Vietnam. The Montagnards are indigenous peoples of the Central Highlands of Vietnam who have long suffered discrimination and mistreatment at the hands of successive Vietnamese governments. In the 1960s and 1970s the Montagnard freedom fighters were the first line in the defense of South Vietnam against invasion from the North, fighting courageously beside members of the Special Forces of the United States Army, suffering disproportionately heavy casualties, all for saving the lives of many of their American and Vietnamese comrades in arms. Today the Montagnards are singled out by the Vietnamese government due to their past association with the United States, their strong commitment to their traditional way of life and to their Christian religion.

Due to this persecution, many Montagnards have attempted to flee Vietnam to other countries, including Cambodia. The Royal Government of Cambodia has announced that Montagnards found in Cambodia who express a fear of return to Vietnam will be placed under the protection of the United Nations High Commissioner for Refugees rather then forcibly repatriated to Vietnam. Unfortunately, it appears there is a policy of systematic repatriation of Montagnardylum seekers to Vietnam by some officials of the central government. There also are credible reports that Vietnamese security forces are operating openly in the Mondulkiri and Ratanakiri provinces of Cambodia to repatriate Montagnards.

My resolution urges the government of Vietnam to allow freedom of religious belief and practice to all Montagnards, return all traditional Montagnard lands that have been confiscated, allow international humanitarian organizations to deliver humanitarian assistance directly to Montagnards in their villages, and to withdraw its security forces from Cambodia and stop hunting down refugees. It also commends the Royal Government of Cambodia for its official policy of guaranteeing temporary asylum for Montagnards fleeing Vietnam and urges the Cambodian government to take all necessary measures to ensure that all officials and employees of the local, provincial, and central governments fully obey the policy of providing temporary asylum. Finally, this resolution has the Department of State make clear to the Government of Vietnam that continued mass repatriations of Montagnards represent a grave threat to the process of normalization of relations between the governments of the United States and Vietnam. I urge my colleagues to join me in supporting the Montagnard peoples of Vietnam by cosponsoring this resolution.

ACKNOWLEDGING ALL THOSE SUFFERING WITH THE DEADLY DISEASE OF HIV/AIDS IN THE CARIBBEAN HON. CHARLES B. RANGEL OF NEW YORK IN THE HOUSE OF REPRESENTATIVES Thursday, June 28, 2001 Mr. RANGEL. Mr. Speaker, while we take into account the millions who die each year in Africa from this deadly disease we know as HIV/AIDS, we must also focus our attention on the Caribbean, as that region has the largest population to become infected with this devastating disease, as reported in the front page of the Washington Post on June 19, 2001, for those who may have missed it, I submit it for the record.

Two-thirds of all those diagnosed with the AIDS virus in the Caribbean are dead within two years. What is even more outrageous is that AIDS is the leading cause of death in the Caribbean for those aged 15 to 45 and the numbers are growing.

About one in every 50 people in the Caribbean, or 2% of the population has AIDS or is infected with HIV, the virus which causes AIDS; more than 4% in the Bahamas, and 13% among urban adults in Haiti.

The UN estimates that there were 9,600 children infected in the Caribbean. Further, the Caribbean Epidemiology Centre (CAREC) as well estimates that the overall child mortality rate will increase 60% by 2010 if treatment is not improved.

Clearly, there is a need not only for the United States government’s assistance but also for the major private foundations to provide AIDS money for Africa to also develop programs that will come to the aid of those in the Caribbean.

I proudly commend Congresswoman DONNA CHRISTENSEN and her efforts to raise awareness in the community, as this disease is kept silent. I also commend the government of the Bahamas as being the only country in the region that has offered universal antiretroviral treatment over the last several years.

While we simply take medical services and treatment for granted in this country, as the number of AIDS cases decreases per year in North America and increases in the Caribbean, it is our obligation to help provide assistance to these governments in order for them...
to provide a simple service to their people, enabling them to live prosperous and healthy lives.

A TRIBUTE TO LT. AUGUSTUS HAMILTON, JR. AND THE MEMBERS OF THE FORCED LANDING ASSOCIATION

HON. JANICE D. SCHAKOWSKY
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Ms. SCHAKOWSKY. Mr. Speaker, today is June 28th. We are only a few days away from the July 4th Independence Day celebrations. As fireworks light up the sky, houses are adorned with crisp flags, and children gaze in wonder at the passing parades, we must not forget the many brave men and women who courageously sacrificed their lives to preserve the freedoms and ideals we all enjoy as Americans.

Throughout our short history, America’s security as a nation has been tested and tried. It is truly a blessing that our youth have been spared the horrors of war. However, for all those who have known war and have died for the sake of humanity, let it be said that they did not die in vain. The gratitude felt by all Americans and our many allies throughout the world is immeasurable.

Let us extend particular thanks to the veterans of World War II. During World War II, Adolf Hitler and his Nazi regime came alarmingly close to achieving world domination. It is difficult to envision what our world might have looked like had Hitler succeeded but, thanks to the heroism of World War II veterans, we will never have to find out.

I’d now like to share a story about one very special World War II veteran, a man by the name of Augustus Hamilton, Jr., and a remarkable group of people in France who have dedicated themselves to ensuring that the memories of World War II veterans endure. This story was told to me by Mr. Hamilton’s niece, Beth White from Chicago, Illinois, and I want to thank Ms. White for taking the time to contact me.

Augustus Hamilton was born on January 4, 1922. At the age of twenty, he enlisted in the U.S. Army Air Corps the day after Pearl Harbor and quickly advanced to First Lieutenant of the 358th Fighter Group, 365th Squadron. By all accounts, he had always been a family hero—an athlete (amateur golf champion for the state of North Carolina and football star who attended the University of North Carolina on a football scholarship), good student, caring brother, and loving son. He was also a new husband and when he went overseas, his wife was pregnant with their child.

Lt. Hamilton served as a fighter pilot in World War II and was awarded an air medal with two oak leaf clusters. According to an eyewitness account, he had shot down one or two enemy fighters before he was killed in action, his Thunderbolt plane crashed near Tillieres sur Avre, France. Lt. Hamilton had already finished his tour of duty and had his bags already packed ready to be rotated back to the USA. He had volunteered for one more mission. Shot down behind enemy lines, he was initially listed as missing in action. Subsequent reports to Hamilton’s family confirmed he was dead, but the military could not provide the family with any physical evidence such as dog tags.

At the time of his death, Lt. Hamilton had never met or seen a photo of his only son, for the baby was born when he was overseas. He had named his fighter plane after his wife and son, “Mrs. Ham/Lil Ham 3rd.” Following the crash, several of his family members persisted in denying his death. He had told his family that if he were ever seriously injured in combat, he would not come home because he didn’t want to be a burden. Remembering these words, his family hoped that he had somehow survived the crash but had decided not to come home due to his injuries, or perhaps had developed amnesia and could not contact them.

In 1993, almost half a century later, the gift of emotional closure was finally given to Lt. Hamilton’s surviving family members by a French man named M. Grusson and his volunteer organization, Forced Landing Association. In an amazing demonstration of appreciation for the U.S. soldiers who fought in World War II, the members of Forced Landing Association devote themselves to finding each of the more than 150 crash sites reported within a 30 kilometer radius of Tillieres sur Avre, an area of intense air battles because of the close proximity of three German airfields. The Association was established in 1986 and has 11 members who live in France. To date, its members have visited 30 crash sites, including that of Lt. Hamilton.

M. Grusson uncovered Lt. Hamilton’s plane in 1993. He then spent a full year tracking down Lt. Hamilton’s surviving family members to return Lt. Hamilton’s dog tags, “wings” (a lapel pin), a belt buckle, and other items. When the Hamilton family asked M. Grusson why he and his associates devote so much time, energy, and personal expense unearthing these crash sites, he replied, “The pilots who gave their lives need to be honored. We want to feel their sacrifices and give them our freedom. They gave us our country. We must honor them.” M. Grusson’s associate, Jacques Larousses, also shared a personal account of the profound impact American soldiers had on him as a young child. He explained that his mother washed the uniforms of American soldiers during the war to make money. When the Americans would come to their home to retrieve their uniforms, they always brought food and chocolate bars to M. Larousses and his mother. Given the scarcity of the time, the kindness of the Americans and their generous gifts made a lasting impression on M. Larousses.

M. Grusson and M. Larousses continue to reverence these American soldiers as heroes to this very day. In fact, the members of Forced Landing Association are completing individual memorials at the crash sites of both Lt. Hamilton and Edward Blevins, Hamilton’s squadron member. These sites will contain photographs and descriptive accounts of these men to commemorate their tremendous service. There will also be a ceremony on July 8th in remembrance of these fallen soldiers.

I applaud the tireless work of M. Grusson and the Forced Landing Association to keep the memory of our veterans illuminated. I hope that on this July 4th holiday, we will not take for granted the countless freedoms we enjoy. Rather, I hope we always remember that such freedoms have been kept alive through the sacrifices of others.

INTRODUCTION OF EDUCATION BILLS

HON. RON PAUL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. PAUL. Mr. Speaker, I rise to introduce two bills designed to help improve education by reducing taxes on parents, teachers, and all Americans who wish to help improve education. The first bill, the Hope Plus Scholarship Act, extends the HOPE Scholarship tax credit to K-12 education expenses. Under this bill, parents could use the HOPE Scholarship to pay for private or religious school tuition or to offset the cost of home schooling. In addition, under the bill, all Americans could use the Hope Scholarship to make cash or in-kind donations to public schools. Thus, the Hope Scholarship could help working parents finally afford to send their child to a private school, while other parents could take advantage of the Hope credit to help purchase new computers for their children’s school.

Mr. Speaker, reducing taxes so that Americans can devote more of their own resources to education is the best way to improve America’s schools. This is not just because expanding the HOPE Scholarship bill will increase the funds devoted to education but because, to use a popular buzz word, individuals are more likely than federal bureaucrats to insist that schools be accountable for student performance. When the federal government controls the education dollar, schools will be held accountable for their compliance with bureaucratic paperwork requirements and mandates that have little to do with actual education, or for students performance on a test that may measure little more than test-taking skills or the ability of education bureaucrats to design or score the test so that “no child is left behind,” regardless of the child’s actual knowledge. Federal rules and regulations also divert valuable resources away from classroom instruction into fulfilling bureaucratic paperwork requirements. The only way to change this system is to restore control of the education dollar to the American people so they can ensure schools meet their demands that children be provided a quality education.

My other bill, the “Professional Educators Tax Relief Act” provides a thousand dollar per year tax credit to all professional educators, including librarians, counselors, and others involved in implementing or formulating the curriculum. This bill helps equalize the pay gap between educators and other professionals, thus ensuring that quality people will continue to seek out careers in education. Good teaching is the key to a good education, so it is important that Congress raise the salaries of educators by cutting their taxes.

Mr. Speaker, I urge my colleagues to join with me in not permitting resources to the American people by cosponsoring my Hope Plus Scholarship Act and my Professional Educators Tax Cut Act.
Mr. HANSEN. Mr. Speaker, it is with pleasure that I rise today to introduce the Virgin River Dinosaur Footprint Preserve Act. This legislation is vital if we hope to preserve some of our nation's most intact and rare pre-Jurassic paleontological discoveries.

In February of 2000, Dr. Sheldon Johnson began development preparations on land adjacent to the Virgin River in southern Utah. After dropping the backhoe and noticing a square fracture in the Navajo sandstone, Mr. Johnson turned the earth over. To his utter amazement, there in the stone were dinosaur tracks, taildraggings, and skin imprints of unprecedented quality. These paleontological discoveries are touted by scientists in the field as some of the most amazing ever discovered. The clarity and completeness of the imprints are unparalleled.

Since that time over 140,000 people from all 50 states and at least 54 foreign countries have visited the site. This attention is welcomed by the present owners, but overwhelming at the same time. Over 5,000 people came to visit on Easter weekend alone when only two volunteers were available to help! With current facilities meager at best, this is beginning to cause traffic and congestion problems for the owners and neighbors of the site, as well as for the city of St. George, Utah.

In addition to the logistical nightmare caused by this discovery, the preservation of these valuable resources is now in jeopardy. The fragile sandstone in which the imprints have been made is susceptible to the heat and wind typical of the southern Utah climate. Rain is nearly catastrophic for these unearthy impressions.

The community and the landowners have come together and have done what they can to do help. They have constructed makeshift shelters for the exposed impressions and volunteers have stepped up to help with tours. Even after all of these efforts, they still need help. The community has asked if there is anything Congress can do to help. Since these resources are of value to the entire world, there is a legitimate role for Congress and the Administration. We have even discussed the possibility that the area might not be possible. Who knows what the cost of inaction might be? I hope my colleagues will support this bill.

CHILD PASSENGER PROTECTION EDUCATION GRANTS ACT

SPEECH OF
HON. CONSTANCE A. MORELLA
OF MARYLAND
IN THE HOUSE OF REPRESENTATIVES
Wednesday, June 27, 2001

Mrs. MORELLA. Mr. Speaker, I rise in support of H.R. 691 which will extend the Child Passenger Protection Grant Program for an additional two years—making the program consistent with the TEA 21 reauthorization cycle.

Currently, the Child Passenger Protection Grant program authorizes $7.5 million each year for the Secretary of Transportation to make incentive grants to states to encourage the implementation of child passenger protection programs in those states. This program is critical to ensuring that child passenger safety is on the minds of citizens nationwide.

Motor vehicle crashes are the single largest cause of child fatalities in the United States. Each year more than 1,400 children die in motor vehicle passengers, and an additional 280,000 are injured. Despite these horrifying figures, parents are still allowing their children to ride unrestrained.

More disturbing is the fact that of children who are buckled up, roughly half are restrained incorrectly—increasing the risk of serious or fatal injuries. Tragically, most of these injuries could have been prevented. Car seats are proven life savers, reducing the risk of death by 69 percent for infants and 47 percent for toddlers.

With programs like the Child Passenger Protection Grants, we can prevent these senseless deaths and injuries by increasing awareness in our communities.

In my district, the Drivers' Appeal for National Awareness (DANA) Foundation has worked tirelessly to increase public awareness for child passenger safety. Joe Colella, from Montgomery County, founded the DANA Foundation in memory of his niece, Dana, who died because of injuries sustained in a crash while riding in a child restraint that was installed with an incompatible system.

Joe deserves great credit for bringing the incompatibility problem to the attention of the National Highway Transportation Safety Administration (NHTSA) and to Congress. Because of the DANA Foundation's efforts, the nation is now better educated and aware about the proper installation of children's safety seats in motor vehicles.

Protecting our children is a national issue that deserves national attention. I urge my colleagues; to support H.R. 691, as well as other noble efforts to increase child passenger safety.
2133. This legislation would establish a commission to encourage and provide for the commemoration of the 50th anniversary in the year of 2004 of the Supreme Court’s unanimous and landmark 1954 decision in Brown v. Board of Education of Topeka Kansas—the most momentous in the 20th Century.

While the 13th, 14th, and 15th Amendments to the Constitution outlawed slavery, guaranteed rights of citizenship to naturalized citizens and due process, equal protection and voting rights, nearly a century would pass before the last vestiges of “legalized” discrimination and inequality would be effectively revoked. The right of equal protection under the law for African Americans was dealt a heavy blow with the Supreme Court’s 1875 decision to uphold a lower court in Plessy v. Ferguson. The Plessy decision created the infamous “separate but equal” doctrine that made segregation “constitutional” for almost 80 years.

It was not until the 1950’s, when the NAACP defense team led by the Honorable Thurgood Marshall as general counsel, launched a campaign to challenge segregation at the elementary school level that launched a national campaign to challenge the Supreme Court’s 1875 decision to uphold a lower court in Plessy v. Ferguson. The Plessy decision created the infamous “separate but equal” doctrine that made segregation “constitutional” for almost 80 years. The Brown decision brought a decisive end to the NAACP defense team not only claimed that segregated schools in grades 4 through 12. It is part of a nationwide and international effort to teach children and teens creative thinking and problem-solving skills. Problem-solving skills taught today are not only critically but also creatively. Team Problem Solving, Action-Based Problem Solving, Individual Problem Solving, and Scenario Writing are all components of the program that award dynamic thinkers. Students have the opportunity to apply their critical thinking skills to real-world problems such as restoration of imperiled natural habitats and genetic engineering. The program is structured around a six-step model for solving complex problems. The steps include recognizing potential challenges, generating and evaluating solutions, and developing a plan for action. Learning to apply these steps every day increases the ability of students to think critically and work efficiently.

Small teams of young people brainstorm solutions and implementation strategies for issues as varied as tourism, global interdependence, and water use. Students are taught to think not only critically but also creatively. Team Problem Solving, Action-Based Problem Solving, Individual Problem Solving, and Scenario Writing are all components of the program that award dynamic thinkers. Students who work in small teams also learn the value of cooperation and teamwork. Young people from each of the three age divisions compete on the regional, state, and international levels. The Future Problems Solving Program is preparing the youth of today to face the demands of tomorrow.

I would like to officially recognize the contributions this program has made and will continue to make to society at large. I want to thank the adults who are enhancing the education of today’s young people and the student participants who are taking the initiative to learn about and help solve today’s difficult issues. These students are taking their futures into their own hands. Keep up the good work!

BROWN v. BOARD OF EDUCATION 50TH ANNIVERSARY COMMISSION

SPEECH OF

HON. RON PAUL
OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 27, 2001

Mr. PAUL. Mr. Speaker, I am pleased to join my colleagues in encouraging Americans to commemorate the 40th anniversary of Brown v. Board of Education and the end of legal segregation in America. However, I cannot support the legislation before us because it attempts to authorize an unconstitutional expenditure of federal funds for the purpose of establishing a commission to provide federal guidance of celebrations of the anniversary of the Brown decision. This expenditure is neither constitutional nor in the spirit of the brave men and women of the civil rights movement who are deservedly celebrated for standing up to an overbearing government infringing on individual rights.

Mr. Speaker, any authorization of an unconstitutional expenditure of taxpayer funds is an abuse of our authority and undermines the principles of a limited government which respects individual rights. Because I must oppose appropriations not authorized by the enumerated powers of the Constitution, I therefore reject this bill. I continue to believe that the best way to honor the legacy of those who fought to ensure that all Americans can enjoy the blessings of liberty and a government that treats citizens of all races equally is by consistently defending the idea of a limited government whose powers do not exceed those explicitly granted it by the Constitution.

THE OUTFITTER POLICY ACT

HON. JAMES V. HANSEN
OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. HANSEN. Mr. Speaker, I am pleased to introduce, today, the Outfitter Policy Act, which will create a statutory authority for permit terms and conditions across America’s public lands.

Millions of Americans recreate on America’s public lands every year, and the services of Outfitters and guides allow our constituents to access many areas of our public lands that would otherwise be inaccessible. These families and civic groups learning to enjoy and respect nature, including horse pack trips and float trips, which many of us have enjoyed.

Unfortunately, many of our federal agencies lack legislative guidance on permit administration. Without guidelines, the system is highly discretionary, and often inconsistent, creating confusion for Outfitters and guides, and ultimately reducing opportunities for our constituents to enjoy our public lands. The system established under this bill would eliminate inconsistencies, and would provide incentives for Outfitters to offer consistently high-quality services to all our constituents.

I would like to thank the original co-sponsors of this legislation for their willingness to join me in this effort to assure public lands access for all Americans, especially my good friend from Idaho, Mr. OTTER. Without his hard work and dedication, this bill would never have been ready with such speed. This is a bill which appropriately balances public needs with conservation efforts, due in large measure because of his efforts. I thank him, as I thank all the co-sponsors of this bill, and hope that all my colleagues will support us in this effort.
Mr. BARCIA. Mr. Speaker, I rise today to pay tribute to my good friend, John Kohr, upon the occasion of his retirement as Chief Executive Officer of Co-Operative Elevator Company in Pigeon, Michigan. I have worked closely with John for the past 20 years and have always held him in the highest esteem. He is the kind of individual who others seek out for guidance because he strives for excellence in all that he does and he never hesitates to take on more than his share in any circumstance.

During more than a decade at the helm and throughout his entire 39 years with the company, John’s enthusiastic leadership, strong work ethic and decentralized management style have helped to mold the company and individuals within it into shining examples for others in the industry to look up to as models for growth and development. He has been the driving force in establishing a record of profitability that is unmatched in the industry state-wide.

Just as importantly, John worked to create an environment that trained others so that they could move up in the organization. One has to look no farther than his replacement, Burt Keefer, to see how John’s style allowed others to succeed. John has a well-deserved reputation as someone who gives unselfishly and extensively to the industry in which he has made a living for his family. In fact, John earlier this year was honored with the Agri-Business Award for Outstanding Member for his many contributions and dedication to the Agri-Business Association. John’s drive for excellence has also extended beyond his profession. He has been very active in many community organizations, volunteering his time and talents for the betterment of his fellow citizens.

Behind every successful businessman, there is always the love and warm support of family. John’s wife, Dianne, and their four children, Kathy, Carrie, Susan, and John, have shared in his dreams and worked hard to help him achieve them. A devoted Christian, John has been the kind of individual who others seek out for guidance because he strives for excellence in all that he does and he never hesitates to take on more than his share in any circumstance.

Mr. Speaker, I rise today to introduce the “Microbicides Development Act of 2001”. I am pleased to be joined by many of my good friends and colleagues who have signed on as original cosponsors to this legislation. My thanks go to them.

Mr. Speaker, this week the United Nations convened a special session of the U.N. General Assembly to address how to combat the spreading HIV/AIDS epidemic.

We have entered a third decade in the battle against HIV/AIDS. June 5, 1981 marked the first reported case of AIDS by the Centers for Disease Control. Since that time, over 400,000 people have died in the United States. Globally 21.8 million people have died of AIDS.

Tragically, women now represent the fastest growing group of new HIV infections in the United States and women of color are disproportionately at risk. In the developing world women now account for more than half of HIV infections and there is growing evidence that the position of women in developing societies will be a critical factor in shaping the course of the AIDS pandemic.

So what can women do? Women need and deserve access to a prevention method that is in their personal control. Women are the only group of people at risk who are expected to protect themselves without any tools to do so. We must strengthen women’s immediate ability to protect themselves—including providing new woman-controlled technologies. One such technology does exist called microbicides.

The Microbicides Development Act of 2001 which I am introducing, will encourage federal investment for this critical research, with the establishment of programs at the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention. Through the work of the NIH, non-profit research institutions, and the private sector, a number of microbicide products are poised for successful development. But this support is no longer enough for actually getting microbicides through the development “pipeline” and into the hands of the millions who could benefit from them. Microbicides can only be brought to market if the federal government helps support critical safety and efficacy testing.

Health advocates around the world are convinced that microbicides could have a significant impact on HIV/AIDS and sexually transmitted diseases (STDs).

Researchers have identified almost 60 microbicides, topical creams and gels that could be used to prevent the spread of HIV and other STDs such as chlamydia and herpes, but interest in the private sector in microbicides research has been lacking.

According to the Alliance for Microbicide Development, 38 biotech companies, 28 not-for-profit groups and seven public agencies are investigating microbicides. Phase III clinical trials have begun on four of the most promising compounds. The studies will evaluate the compounds’ efficacy and acceptability and will include consumer education as part of the compounds’ development. However, it will be at least two years before any compound trials are completed.

Currently, the bulk of funds for microbicide research comes from NIH—nearly $25 million per year—and the Global Microbicide Project, which was established with a $35 million grant from the Bill and Melinda Gates Foundation. However, more money is needed to bring the microbicides to market. Health advocates have asked NIH to increase the current budget for research to $75 million per year.

Mr. Speaker, today, the United States has the highest incidence of STDs in the industrialized world—annually it is estimated that 15.4 million Americans acquired a new STD. STDs cause serious, costly, even deadly conditions for women and their children, including infertility, pregnancy complications, cervical cancer, infant mortality, and higher risk of contracting HIV.

This legislation has the potential to save billions in health care costs. Direct cost to the U.S. economy of STDs and HIV infection, is approximately $8.4 billion. When the indirect costs, estimated to be lost productivity, are included that figure rises to an estimated $20 billion.

With sufficient investment, a microbicide could be available around the world within five years.

I urge my colleagues to lend their support to this vital legislation.

CELEBRATING THE OPENING OF THE SMITHSONIAN FOLK LIFE FESTIVAL

HON. CHARLES B. RANGEL
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. RANGEL. Mr. Speaker, I rise before you today to celebrate the opening of the Smithsonian Folk Life Festival. I commend the Smithsonian Institution for its decision to feature New York City and its rich heritage and diversity. I am delighted that Harlem, the legendary Apollo Theatre, will be showcased by hosting its famous “Amateur Night at the Apollo” on the Mall Saturday, July 7. For the very first time Americans outside of New York will be allowed to be a part of Amateur Night at the Apollo. They will be able to experience the excitement of Amateur Night at the Apollo in the same way that past winners, such as, Billie Holiday, Ella Fitzgerald, Sarah Vaughn, James Brown, and Stevie Wonder did many years ago.

When New Yorkers took the A-train uptown, the first stop was the Apollo. When the downtown musicians wanted to learn how to play jazz they went to the Apollo. When the kids from Brooklyn wanted to learn how to bebop and “lindy hop” they went to the Apollo.

The Apollo stage is where the Godfather of Soul—James Brown, got his soul, where Michael Jackson showed off the moonwalk; and today it provides a showcase for leading hip-hop artists.

The Apollo Theatre was built in 1913, however it was not until 1932 when Sydney Cohen purchased it that it became known as a Black Vaudeville house. This change was reflective of the influx of African-Americans into the area between 135th and 145th streets and the changes in Harlem entertainment. Over the next few decades the Apollo became the place to perform if you were a rising Black musician. You were not accepted as a serious musician in Harlem until you performed and excelled at the Apollo.

For more than eighty years the Apollo Theatre has been the first home of African-American music, the cultural mecca of Harlem, and the monument to the achievement of Black Americans in the entertainment industry. The Theatre achieved the high point of its popularity in the 1950’s when the growing number
of popular Black entertainers were still restricted to performing at Black venues. Acts that have graced the stage include: Bessie Smith in 1935, Count Basie and Billie Holiday in 1937, Sammy Davis, Jr., as a dancer in the Will Mastin Trio in 1947, Bill Cosby in 1968, Prince in 1983, and Tony Iannone in 1997.

The Apollo, located on 125th Street, is the centerpiece of Harlem and one of the main attractions for Harlem visitors. It has become the number one tourist attraction in New York. I am proud to announce that a major $6.5 million revitalization and expansion of the Apollo Theatre is being undertaken, which will make a major contribution to the Harlem community through the transformation of this venue into a major performing arts center.

The renowned Apollo Theatre is a national treasure that has made major contributions to the entertainment industry of this nation. The Theatre was designated a New York City landmark and listed on the National Register of Historic Places in 1983.

Some might say the Apollo is the home of Black music, but I would say the Apollo is the home of American music. I invite everyone to join with me in celebrating The Smithsonian 2001 Folk Life Festival, New York City, and the legendary Apollo Theatre.

INTRODUCTION OF THE "COMMERCIAL FISHERMEN SAFETY ACT OF 2001"

HON. ROB SIMMONS
OF CONNECTICUT
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. SIMMONS. Mr. Speaker, since colonial days my home town of Stonington has been home to Connecticut's only commercial fishing fleet, and I am proud to be its congressional representative.

Commercial fishing continues to rank as one of the most hazardous occupations in America. According to the United States Coast Guard and the Bureau of Labor Statistics, the annual fatality rate for commercial fishermen is about 150 deaths per 100,000 workers.

In order to increase the level of safety in the fishing industry, the U.S. Coast Guard requires all fishing vessels to carry safety equipment. Required equipment can include a life raft that automatically inflates and floats free should the vessel sink; personal flotation devices or immersion suits; Emergency Position Indicating Radio Beacons (EPIRB); visual distress signals; and fire extinguishers.

When an emergency arises, safety equipment is priceless. At all other times, the cost of purchasing or maintaining life rafts, immersion suits, and EPIRBs must compete with wages, maintenance, and insurance. Meeting all of these obligations is made more difficult by a regulatory framework that uses measures such as trip limits, days at sea, and gear alterations to manage our marine resources.

Commercial fishermen should not have to choose between safety equipment and other expenses. That's why I am introducing the "Commercial Fishermen Safety Act of 2001," which would provide for a tax credit equal to 75 percent of the amount paid by fishermen to purchase or maintain required safety equipment. The tax credit is capped at $1,500 and includes expenses paid or incurred for maintenance of safety equipment required by federal regulations. Sens. Susan Collins (R-ME) and John Kerry (D-MA) have introduced identical legislation in the Senate.

The Commercial Fishermen Safety Act of 2001 could improve safety by giving commercial fishermen more of an incentive to purchase and care for safety equipment. I ask my colleagues to join me in helping commercial fishermen protect themselves while doing their jobs.

JUNIOR ACHIEVEMENT VOLUNTEER AWARD OF EXCELLENCE WINNER, FRED HAMPION, ALBUQUERQUE, NM

HON. HEATHER WILSON
OF NEW MEXICO
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mrs. WILSON. Mr. Speaker, I rise to speak today about a distinguished member of my district who is being honored by an organization, which has had an immeasurable impact on America.

Fred Hampton, a retired AT&T employee, is Junior Achievement's National Volunteer Award of Excellence recipient this year. He has been a Junior Achievement volunteer for six years. During these six years, he has taught 60 classes and spent countless hours furthering the efforts of this organization. Since moving to New Mexico, Fred has been involved in making Junior Achievement a major presence in the education of the area's students. He regularly volunteers in classes of students with special needs and teaches JA classes in remote locations difficult to reach by others. In addition, his service extends beyond the classroom, as he has helped to recruit bilingual volunteers to teach JA classes in Spanish.

The history of Junior Achievement is a true testament to the indelible human spirit and American ingenuity. Junior Achievement was founded in 1919 by Horace Moses, Theodore Vail, and Senator Murray Crane of Massachusetts, as a collection of small, after-school business clubs for students in Springfield, Massachusetts.

As the rural-to-city exodus of the populace accelerated in the early 1900s, so too did the demand for workforce preparation and entrepreneurship. Junior Achievement students were taught how to think and plan for a business, acquire supplies and talent, build their own products, advertise, and sell. With the financial support of companies and individuals, Junior Achievement recruited numerous sponsoring agencies such as the New England Rotarians, Boy Scouts, Girl Scouts, Boys & Girls Clubs, the YMCA, local churches, playground associations and schools to provide meeting places for its growing ranks of interested students.

In a few short years JA students were competing in regional expositions and trade fairs and rubbing elbows with top business leaders. In 1925, President Calvin Coolidge hosted a reception on the White House lawn to kick off a national fundraising drive for Junior Achievement in the Senate. By the late 1920s, there were nearly 800 JA Clubs with some 9,000 Achievers in 13 cities in Massachusetts, New York, Rhode Island, and Connecticut.

During World War II, enterprising students in JA business clubs used their ingenuity to find new and different products for the war effort. In Chicago, JA students won a contract to manufacture 10,000 pant hangers for the U.S. Army. In Pittsburgh, JA students developed a specially lined box to carry off incendiary devices, which was approved by the Civil Defense and sold locally. Elsewhere, JA students made baby incubators and used acetylene torches in abandoned locomotive yards to obtain badly needed scrap iron.

In the 1940s, leading executives of the day such as S. Bayard Colgate, James Cash Penney, Joseph Sprang of Gillette and others helped the organization grow rapidly. Stories of Junior Achievement's accomplishments and of its students soon appeared in national magazines of the day such as TIME, Young America, Colliers, LIFE, The Ladies Home Journal and Liberty.

In the 1950s, Junior Achievement began working more closely with schools and saw its growth increase five-fold. In 1955, President Eisenhower declared the week of January 30 to February 5 as "National Junior Achievement Week." At this point, Junior Achievement was operating in 139 cities and in most of the 50 states. During its first 45 years of existence, Junior Achievement enjoyed an average annual growth rate of 45 percent.

To further connect students to influential figures in business, economics, and history, Junior Achievement started the Junior Achievement National Business Hall of Fame in 1975 to recognize outstanding leaders. Each year, a number of business leaders are recognized for their contribution to the business industry and for their dedication to the Junior Achievement experience. Today, there are 200 laureates from a variety of businesses and industries that grace the Hall of Fame.

By 1982, Junior Achievement's formal curriculum offering had expanded to Applied Economics (now called JA Economics), Project Business, and Business Basics. In 1988, more than one million students per year were estimated to take part in Junior Achievement programs. In the early 1990s, a sequential curriculum for grades K–6 was launched, catapulting the organization into the classrooms of another one million elementary school students.

Today, through the efforts of more than 100,000 volunteers in the classrooms of America, Junior Achievement reaches more than four million students in grades K–12 per year. JA International takes the free enterprise message of hope and opportunity even further... to more than 1.5 million students in 111 countries. Junior Achievement has been an influential part of many of today's successful entrepreneurs and business leaders. Junior Achievement's success is truly the story of America—the fact that one idea can influence and benefit many lives.

Mr. President, I wish to extend my heartfelt congratulations to Fred Hampton of Albuquerqu, New Mexico for his outstanding service to Junior Achievement and the students of New Mexico. I am proud to have him as a member of my district and proud of his accomplishment.
SUPPORT OF NEW COLLEGE

HON. DAN MILLER
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. MILLER of Florida. Mr. Speaker, I am here today to congratulate New College on being the newest accredited independent liberal arts college in the state university system of Florida.

New College was founded in 1960 as an independent college by Sarasota and Bradenton civic leaders. When the school opened in 1964, it accepted students on their academic talents, not on their race, creed or gender. In 1975, during a time of financial uncertainty, this 650-student college joined with the University of South Florida. Even with this merger, New College retained its faculty, academic programs and competitive admissions.

New College is known as the Honors College of Florida, being the only public college or university in Florida designated as "Highly Competitive" by Barron's Magazine. The graduates of New College are some of the brightest and most motivated of all college graduates in the country.

I wish the best of luck to New College and to all its students and faculty during its transition. They have met many challenges in the past and face more in the future, but New College will succeed and make Florida very proud. I am honored to represent this institution.

TRIBUTE TO W. GEORGE HAIRSTON III

HON. SPENCER BACHUS
OF ALABAMA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. BACHUS. Mr. Speaker, I rise today to honor Mr. W. George Hairston III for his outstanding contributions to the U.S. commercial nuclear industry and, by extension, to the nation as a whole. Mr. Hairston currently serves as president and CEO of Southern Nuclear Operating Company, and was recently inducted into the State of Alabama Engineering Hall of Fame in recognition of his accomplishments.

Mr. Hairston’s resume is extensive and distinguished. He is a veteran of the United States Army Corps of Engineers and of the Vietnam War. His degrees were earned at the Massachusetts Institute of Technology in 1991, he successfully completed the Masters in Nuclear Engineering from the Georgia Institute of Technology. Additionally, in 1991, he successfully completed the Massachusetts Institute of Technology’s Program for Senior Executives.

Mr. Hairston is also active in his community, holding positions on the Board of Directors for the Institute of Nuclear Power Operations (INPO), where he also served as chairman of the INPO National Nuclear Accrediting Board, and the WANO-Atlanta Center Governing Board. Mr. Hairston is currently a member of the Nuclear Energy Institute (NEI) Board of Directors, Executive Committee, and the Nuclear Strategic Issues Advisory Committee (NISIA).

He also serves as Chairman of the NEI Government Relations Advisory Committee.

It is clear that such honors and qualifications are more than most individuals could obtain in a lifetime. However, Mr. Hairston continues to strive for excellence not only in his work but also in his community. He stresses the importance of equality in the workplace and focuses on minority recruiting. Additionally, he understands the importance of cultivating in the nation’s youth an understanding of and an interest in the field of engineering. By serving on the Board of Directors for Juniors in Achievement in Birmingham and the Auburn Alumni Engineering Council, and by chairing the INROADS/Birmingham Advisory Board, Mr. Hairston positions himself as a mentor for bright, young engineers.

His refusal to remain content with serving and influencing any one area or group is both admirable and challenging. While his accomplishments are many, it is his concern for his fellow citizens and his country that truly set him apart.

Mr. Speaker, please join me in honoring Mr. W. George Hairston III, an outstanding businessman, leader, and servant to the community.

CALL FOR HUMANITARIAN ASSISTANCE TO THE PEOPLE OF THE NUBA REGION IN SUDAN

HON. CHARLES B. RANGEL
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. RANGEL. Mr. Speaker, I rise before you today to bring your attention to the grave situation in Sudan and specifically to the people of the Nuba region. I urgently call on President Bush and Secretary of State Colin Powell to work for an immediate lifting of the cruel siege of the Nuba region of Sudan.

For over ten years, the Government of Sudan has denied all humanitarian relief aid to the people of the Nuba, despite the terrible plight of tens of thousands of innocent civilians. Very recent reports indicate that the cumulative effect of this brutal siege has been to push 85,000 people to the very brink of starvation. Without immediate humanitarian intervention, thousands of people will begin to die—and they will continue to die until humanitarian aid is permitted into the region.

Countless mothers will suffer the agonizing fate of watching helplessly as their children die for lack of food, and then succumbing themselves.

This is intolerable and utterly indefensible. Nowhere in the world is the denial of food aid used as a more vicious weapon of war than in the Nuba region of Sudan. Further, the attention of Sudanese officials have recently burned thousands and thousands of people out of their homes, making them even more vulnerable in these precarious circumstances.

There is in Lokichokio in northern Kenya, the center of relief operations for southern Sudan, humanitarian aid ready and able to assist the people of the Nuba tomorrow. What is required is access. It is imperative that the United States take the international lead in demanding, in the strongest possible terms, that the Government of Sudan lift this brutal siege immediately.

We must continue to work together as a nation to stop slavery, aerial bombardments of innocent civilians, religious persecution and induced famine in the Sudan. The recent passage of the Sudan Peace Act of 2001 with an overwhelming vote of 422 to 2 shows the tremendous support of the U.S. House of Representatives in applying all necessary means to bring an end to the civil war and its related atrocities. We must continue this momentum in the Senate, and show unified U.S. support with unanimous passage of the Sudan Peace Act when it comes to the Senate floor.

INTRODUCTION OF THE "ENDANGERED SPECIES CONSOLIDATION ACT"

HON. C.L. "BUTCH" OTTER
OF IDAHO
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. OTTER. Mr. Speaker, since 1970, two federal agencies have had jurisdiction over implementation and enforcement of the Endangered Species Act nationwide—the U.S. Fish and Wildlife Service (USFWS) under the U.S. Depart- ment of the Interior, and the National Marine Fisheries Service (NMFS), which is part of the National Oceanic and Atmospheric Administration under the U.S. Department of Commerce. Before 1970, NMFS’ programs were implemented by USFWS. This changed when President Nixon signed a law creating it 3 years before the enactment of the Endangered Species Act. If President Nixon knew how ESA—NMFS would look today—30 years later—he probably would have second thoughts.

The U.S. Fish and Wildlife Service has jurisdiction of over 1,800 species of plants, mammals, birds, and fish, and an annual ESA budget of $112 million. NMFS—with responsibility for just 42 listed species of marine mammals and fish—has an annual ESA budget nearly as high as USFWS—$105 million. Many of NMFS’ ‘species’ include ‘evolutionary significant units’ designations that NMFS created without Congressional authorization—hardly the responsibility the United States reports to the United Nations.

Mr. Speaker, the net objectives of these two agencies have become blurred. For example, both NMFS and USFWS have undertaken the listing and recovery of Atlantic salmon, the Gulf sturgeon, and four species of sea turtles.

In the Pacific Northwest, the USFWS manages freshwater bull trout and hatchery salmon, while NMFS has devoted billions of dollars to regulate and enforce the recovery of ‘wild’ salmon and steelhead in the same watersheds.

NMFS allows the commercial and tribal harvest of thousands of salmon that it acknowledges are endangered. NMFS’ interpretation of ESA has caused hundreds of activities—including those having minimal impact—or those that actually aid—the recovery of species to be held up for months or years.

Instead of becoming more efficient, NMFS’ response is to request more federal money and expand their regulatory activities while failing to identify goals for how many species of fish need to recover.

All species—fish and humans—deserve better from the federal government. That is why today I and my friend and colleague from
In the 1970s, the Wright Township Recreation Park was completed, and the township is currently in the process of a major expansion of the park to include a regulation soccer field, loop trail and a plaza with additional parking. Another service to residents is the drop-off recycling program that was begun in 1991 for the Mountainview Recycling Center.

The community has planned an extensive celebration of its 150th anniversary and America’s independence that includes a concert, fireworks and a festival with food, entertainment, games and crafts. Mr. Speaker, I am proud to represent the people of Wright Township, and I am pleased to call their community and patriotic spirit to the attention of the House of Representatives on the occasion of the township’s 150th anniversary.

A TRIBUTE TO NORMA STEWART HAMILTON

HON. BOB ETHERIDGE
OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. ETHERIDGE. Mr. Speaker, I rise today to pay tribute to one of America’s greatest teachers, Mrs. Norma Stewart Hamilton of Dunn, North Carolina, in my congressional district, who is retiring from teaching on June 29th after 39 years of service to the children and communities of Harnett County. I want to take this opportunity to thank her for her hard work and service.

Norma Hamilton teaches home economics. She is known for her disciplined teaching style, but she possesses an ability to make her classroom an enjoyable place to learn. Recently, several of her former students joined together to celebrate her life’s work at the 39th annual Western Harnett High School Mother-Daughter Banquet. They recalled her classes, the exams she gave, and most importantly, her willingness to listen and give sage advice. One of Mrs. Hamilton’s former students, Mrs. Rebecca Collins Hunter, herself a home economics teacher, remembered that Mrs. Hamilton never allowed teaching subject matter to supersede her goal of teaching the individual. It has been said that “The mediocre teacher tells. The good teacher explains. The superior teacher demonstrates. And the great teacher inspires.” As the former Superintendent of my state’s schools, I know the difference that an outstanding teacher can make in the lives of young people. Great teachers, like Norma Hamilton, not only teach academic lessons, they teach life lessons. They strengthen the moral fiber of their students and of the communities where they teach. They challenge their students to strive for excellence.

In almost four decades, she touched and shaped the lives of over 4,000 children. She inspired more than a generation of students to achieve their dreams and make their own unique impression upon the world.

Mr. Speaker, when Norma Hamilton retires at the end of this week, she will take on a new role in the Harnett County community. Although she will no longer teach in a classroom, we know she will continue to influence the lives of those around her because great teachers never stop teaching. Today, I honor her for her dutiful service, and on behalf of a grateful state, I thank her for inspiring us with her great teaching.

HONORING THE DISTINGUISHED PUBLIC SERVICE OF JOHN PITTARD

HON. BART GORDON
OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. GORDON. Mr. Speaker, I rise today to recognize the long and distinguished career that my friend John Pittard has had in the public service arena. John has served on the City Council in my hometown of Murfreesboro, Tennessee, for 19 years, as well as other civic boards and organizations within the city.

John’s pride for his community is obvious. He has helped guide the city through a period of tremendous growth, not only in population but also in quality of life. He is one of the most honorable public servants I know, and I’ve known him most of my life. In fact, we went to high school and college together.

John’s devotion to public service comes honestly. Both his mother, Mabel Pittard, and his father, the late Homer Pittard, were long-time educators and gave much of themselves to their community. A Murfreesboro school—the Homer Pittard Campus School—was even named after John’s father.

Murfreesboro owes a huge debt of gratitude to John, who never became disillusioned or cynical during his two decades of public service. He served the city because of his love for the community, nothing else. John’s wife, Janice, and his daughters, Emily, Mary and Sarah, are fortunate to have such a good man in their lives.

I have a deep admiration for John and congratulate him for his many accomplishments. His decency transcends both his public and private life. Thank you, John, for being such an unselﬁsh and caring public servant.

HONORING SKIHI ENTERPRISES, LTD.

HON. KAY GRANGER
OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Ms. GRANGER. Mr. Speaker, today I want to recognize a great Texas company, SKiHi Enterprises, Ltd., on its 20th anniversary. Over the past 20 years, SKiHi has built a reputation as one of Texas’ leading mechanical/industrial contractors. I want to extend my congratulations to the company’s founders, Richard Skipper and Tom Hicks, and to everyone else who has had a hand in SKiHi’s success.

In 1981, Richard Skipper and Tom Hicks formed SKiHi. Mr. Skipper and Mr. Hicks had both worked in the industry for many years, which gave them the experience and knowledge they needed to create a successful business together. They started with a simple business plan, focusing on not over-extending SKiHi’s limited resources and on steady, controlled growth. Because of these wise business practices and high quality work, SKiHi has become one of the best respected mechanical/industrial contractors in the state of Texas.
Today, SkiHi is a full service mechanical-industrial contractor with over 220 employees. The company has a 38,000 square foot headquarters and fabrication shop in Fort Worth, Texas, and opened an office in Lubbock, Texas two years ago. SkiHi's volume was $1 million in its first year, $4 million in the second year, and was over $33 million in 2000.

SkiHi has worked on many large construction projects in Texas. One of SkiHi's first projects was renovating the Tarrant County Courthouse in downtown Fort Worth. SkiHi has also done work in North Texas on Burlington Northern Santa Fe's corporate headquarters, Nestle's Texas Distribution Center, the James West Special Care Center for Alzheimer's Disease, the University of North Texas Health Science Center, Alcon Laboratories, and the Dallas-Fort Worth Rental Car Facility. In recent years, the company has also completed many projects outside of the Fort Worth area. The most notable is the United Spirit Arena at Texas Tech University in Lubbock.

SkiHi also gives back to the industry and community. In conjunction with the Construction Education Foundation, SkiHi provides workforce training classes at North Lake College and Trimble Tech High School. The Construction Education Foundation is a coalition of North Texas contractors that trains approximately 600 apprentices each year. SkiHi sends employees to high school career days and job fairs to promote the construction business. The company also provides on-the-job training for young men and women interested in a career in construction.

Additionally, SkiHi is an active member of the Associated Builders and Contractors. The company has been awarded for its quality work by the Associated Builders and Contractors on numerous occasions. Most recently, SkiHi was awarded First Place on the local level for the 2000 Associated Builders and Contractors Excellence in Construction Awards for its work on the Dallas-Fort Worth International Airport Rental Car Facility.

Once again, Mr. Speaker, I want to congratulate SkiHi Enterprises, Ltd., for 20 years of success. I know that the next 20 years will be even more productive.

HONORING THE 20TH ANNIVERSARY OF THE NATIONAL FOUNDATION FOR ECTODERMAL DYSPLASIAS

HON. JERRY F. COSTELLO
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001
Mr. COSTELLO. Mr. Speaker, I rise today to ask my colleagues to join me in recognizing the 20th anniversary of the National Foundation for Ectodermal Dysplasias (NFED) in MASCOUTAH, ILLINOIS.

The NFED is the only organization in the United States providing comprehensive services to individuals affected by the ectodermal dysplasia syndromes (EDS) and their families. EDS are a group of genetic disorders which are identified by the absence or deficient function of at least two derivatives of the ectoderm (teeth, hair, and sweat glands). There are at least 150 forms of EDS that have been identified. EDS was first recognized by Charles Darwin in the late 1860's.

EDS affects many more people that had been originally thought by Darwin. Today, the number of those individuals affected by EDS has been estimated as high as 7 in 10,000 births. Individuals affected by EDS have abnormality of the sweat glands, tooth buds, hair follicles and nail development. Some individuals may have missing or malformed teeth or problems with their immune system and sensitivity to light. In rare cases, the lifespan of a person with EDS may be affected. Many individuals affected by EDS cannot perspire, requiring air conditioning in the home, at work or in school. Some individuals may have missing or malformed teeth or problems with their upper respiratory tract. EDS is caused during pregnancy, as the baby is developing. During the formation of skin tissues, defects in formation of the outer layers of the baby's skin may lead to ED.

At this time there is no cure for ED. The NFED, incorporated in 1981, is the sole organization providing comprehensive services to families affected by EDS. The NFED is committed to improving lives by providing information on treatment and care and promoting research. There are more than 3000 individuals served by the NFED in 50 states and 53 countries. They have provided more than $115,000 in financial assistance to families for their dental care, medical care, air conditioners, wigs, cooling vests and other needs. The NFED has provided patient access and granted more than $237,000 to researchers studying the various aspects of EDS. These grants have totaled more than 2 million dollars in ED research. They continue to host continuing educational programs on ED for health care professionals and provide the most comprehensive and current information on ED in the world.

Mr. Speaker, I ask my colleagues to join me in honoring the 20 years of service of the National Foundation for Ectodermal Dysplasias and it's aid and comfort to those affected by this terrible disease.

EIGHT-YEAR-OLD SHOWS COURAGE UNDER PRESSURE

HON. HOWARD COBLE
OF NORTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001
Mr. COBLE. Mr. Speaker, the words courageous and heroic are sometimes used without thought or care. In the Sixth District of North Carolina, however, those adjectives and more should be applied to one of our young citizens who bravely came to his mother's rescue. For his efforts, eight-year-old Michael Mathis from Gaston County was recognized by the National Emergency Number Association as a North Carolina 911 hero and he was named Michael a 911 hero, and he was awarded the North Carolina 911 hero award, and he was recognized by the National Emergency Number Association. Young Michael was caught in a terrible predicament, which required him to show great courage while under severe pressure. Michael didn't let his young age hold him back from stepping up to save the life of his father, and a 911 hero award, and he was recognized by the National Emergency Number Association. Young Michael was caught in a terrible predicament, which required him to show great courage while under severe pressure. Michael didn't let his young age hold him back from stepping up to save the life of his father, but unfortunately the phone went dead, thinking that his minutes had expired. Knowing that a call to 911 was free, he then called the emergency number for help. Michael tried to tell the dispatcher where they were located, but with only trees and grass visible, he was only certain that they were on Highway 109.

Shortly after that, the car, which was a stick shift, began to roll forward. Michael's voice suddenly turned to panic, and he pleaded with the dispatcher to have someone find them. The dispatcher instructed him to take the key out of the ignition. Though he was overcome with fear, Michael managed to get the key out, and the car stopped. The dispatcher told Michael to honk the horn and flash the lights in the hope that a passing car would stop. Michael quickly complied with the dispatcher's orders. Finally, a car stopped, and to his good fortune, the passengers in the car were an emergency worker and a trained nurse. When Michael's stepfather arrived, the car was surrounded by people who were there to help. Cathy Surratt was taken to an area hospital where she was successfully treated and released.

The Davidson County Sheriff's Department named Michael a 911 hero, and he was awarded a plaque at a special ceremony. This week, the National Emergency Number Association recognized Michael at its 20th annual conference, along with other National 911 heroes. I am very pleased to be able to recognize Michael as one of our North Carolina 911 heroes. On behalf of the citizens of the Sixth District of North Carolina, we offer our personal congratulations to Michael Mathis—a true hero.

HONORING THE SAYERS FAMILY OF CLARK COUNTY, OHIO

HON. DAVID L. HOBSON
OF OHIO
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001
Mr. HOBSON. Mr. Speaker, I rise today to recognize the members of the Sayers Family from Clark County, Ohio and their combined commitment to shared American values. I rise today to recognize the fact that the four children of Charles and Virlie Sayers have each married and raised their own families for a combined total of 231 years. The Sayer Family provides an example of what one can expect from a family through generations.

In today's society, it is very uplifting to hear stories such as these and to see the commitment this Ohio family has made to one another. It was through the Sayer Family's strong foundation that they understood the meaning of hard work as well as the value of family. Growing up, the children were encouraged to become good students, trained in music, and helped run their family farm. They understood the meaning of responsibility and the importance of strong family ties.
Mr. BERRY. Mr. Speaker, I rise today to pay tribute to a great Arkansan and outstanding Osteopathic physician. I am proud to recognize James E. Zini, D.O., in the Congress for his invaluable contributions and service to his community, to our state, and to our nation.

Dr. Zini epitomizes the Osteopathic profession. With his application of Osteopathic practices and principals, he personifies the model D.O. physician—practicing in a small rural town taking care of people, not just treating symptoms. He started his family practice in rural Mountain View, Arkansas, in 1977. In his Mountain View and Marshall clinics, along with partner David Burnett, D.O., office manager Judy Zini, and the Zini Clinic staff, Jim makes sure that every patient visit—approaching 13,000 annually—is remembered as excellent, quality D.O. care.

Dr. Zini is Board Certified in Family Practice by the American College of Osteopathic Family Physicians and is a fellow of the college. Jim is also Board Certified by the American Board of Quality Assurance and Utilization Review Physicians.

As a founder and leader of the Arkansas Osteopathic Medical Association (AOMA), Dr. Zini tirelessly worked to advance the Arkansas Osteopathic profession: to promote the Osteopathic family in all areas affecting D.O.s; and to protect the licensure, practice and educational interests of all Arkansans. D.O.s. Dr. Zini has served his state association with distinction: Founder, President, Vice President, Committee Chairperson, Member, and he received the first AOMA Physician of the Year Award in 1989. Jim is also the first D.O. to serve on the Arkansas State Medical Board—a position designated by law that he worked to enact.

Dr. Zini furthered his commitment to the Osteopathic profession at the national level: serving as an Arkansas delegate to the American Osteopathic Association (AOA) House of Delegates; numerous House committees; AOA Board of Trustees; several key AOA committees and chairmanships; and 2001–2002 AOA President. His community leadership, service and recognition include: 1998 Flight Safety Award, Federal Aviation Administration; 1997 Distinguished Citizen Award, Mountain View Chamber of Commerce; 1996 Alumni of the Year Award, University of Health Sciences in Kansas City, Missouri; 1991 Federal Aviation Administration Certificate of Recognition; Sigma Sigma Phi Honorary Osteopathic Fraternity; and 1972 Ordained Minister, St. Paul's United Church of Christ in Little Rock, Arkansas.

James E. Zini, D.O., is a physician, advisor and friend to many. He has dedicated his life to serving his fellow citizens as a leader in both his profession and his community, and he deserves our respect and gratitude for his priceless contributions. On behalf of the Congress, I extend congratulations and best wishes to my good friend James E. Zini, D.O., on his successes and achievements.
work, school, or medical care appointments. States are also encouraged to use their welfare reform block grant to provide transportation stipends to parents who meet the same distance standards. This measure will enable states to operate the program through their Community Action agencies or welfare departments. Thus, states will have the flexibility to set income-eligibility standards similar to the current eligibility for LIHEAP. The prices at which the program triggers on and subsequently releases will then be set for each jurisdiction through consultation between the Secretary of Health and Human Services and the Secretary of Energy. LIGAP is not meant to be a substitute for the long-term energy solutions we all seek for our nation. Each of us understands the necessity of a comprehensive and balanced approach to energy development, but we must realize that in every state there are hard-working people and elderly individuals whose monthly budgets are being stretched to the breaking point by the cost of gasoline. While we must continue this country's energy demand with the willingness to make the tough, long-range choices demanded of us, it is equally important that we heed the immediate damage being caused by the current high prices. We must show a willingness to provide some comfort for those Americans who are most at risk.

Mr. Speaker, we all recognize that people are suffering and that something must be done to help with the high cost of gasoline. I urge my colleagues to join us in this proposal that is both forward thinking and comprehensive.

**HONORING THE LIFE AND SERVICE FIRE CHIEF JACK FOWLER, JR.**

**HON. SCOTT McINNIS**

**OF COLORADO**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. McINNIS. Mr. Speaker I would like to take this opportunity to honor a life spent serving others, the life of Jack Fowler, Jr. Jack was a man that selflessly dedicated his life to protecting the lives of others. On Sunday, June 24, 2001, Jack was killed on his way home from a training session with the Volunteer Fire Department of West Pueblo.

Jack was born in the nearby community of La Junta. He graduated from La Junta High School, and started his career as a firefighter at the La Junta Volunteer Fire Department, following in the footsteps of his father and grandfather. After moving to Pueblo West in 1978, Jack joined the Pueblo West Volunteer Fire Department where he was quickly promoted to Lieutenant. After serving only two short years on the Pueblo West squad, Jack was named Captain. Not only did Jack fulfill his duties as Captain, but went above and beyond these duties, by taking many courses that enhanced his career. Highways Emergency Response, Colorado Division of Disaster Emergency Services, and Emergency Response to Hazardous Materials Incidents to name a few. With all the extra time Jack put into his position at the Pueblo West Fire Department, he was the obvious choice for Fire Chief in 1983.

The dedication to his community did not stop with his position on the Fire Department, Jack also volunteered with the Columbine Council Girl Scouts and spent time at the local schools. Jack loved to spend time with his daughters, Allison and Caitlyn, so he never missed an opportunity to volunteer for activities the girls were involved with. Jack balanced his commitment to his community and his family well. This charismatic man was loved by all that knew him. His dedication to Pueblo West and its citizens has left a lasting mark on the community, not to mention the State.

A life dedicated to the service of others, is why I stand before you today. Mr. Speaker, asking Congress to give this man the recognition he so justly deserves. He will be greatly missed by friends, fellow fire fighters and his family, but the State of Colorado will also feel the loss of this man. I would like to offer my condolences to his wife DyAnn and his daughters Allison and Caitlyn, and assure them that Jack Fowler, Jr. will not be forgotten by Pueblo County and the State of Colorado.

**FRIENDS OF DISABLED ADULTS AND CHILDREN JUNE 28, 2001**

**HON. BOB BARR**

**OF GEORGIA**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. BARR of Georgia. Mr. Speaker, established in 1986 in order to provide medical equipment and computers to disabled people in the metro Atlanta area who could not otherwise afford it, Friends of Disabled Adults and Children is a full-time ministry which has reached out to more than 100,000 disabled people.

After retiring from a 20-year career in the Marines in 1978, Ed Butchart took a position selling medical diagnostics products. After having met many disabled people in need of products and service, he and his wife, Annie, with the support of Mount Carmel Christian Church, started a ministry in their home garage. Ed would repair and refurbish wheelchairs and give them to those disabled individuals who could not afford to purchase one.

Since then, the ministry has helped people ranging in age from 18 months to 103 years of age. The facility is now housed in a 64,800 sq. ft. building in Stone Mountain, Georgia and to date it has provided over 7,000 wheelchairs to needy persons. The retail value of all medical equipment that has been given away now totals over $30 million.

Friends of Disabled Adults and Children received its 501(c)(3) non-profit status in November 1987. Private donations, annual golf tournaments, and community fund raisers help the ministry to furnish medical equipment to those who truly need it. On numerous occasions, my staff members have referred disabled adults and children to this ministry. It may take a little time to acquire a certain piece of medical equipment, but Friends of Disabled Adults and Children usually is able to accommodate these individuals. Recently a single mother, who has Multiple Sclerosis, was able to get out and watch her son play baseball, because she had received an electric scooter from Friends of Disabled Adults and Children. A senior citizen recently received a new walker and able just for her, because her old one was broken.

This organization distributes computers to those who are disabled. This sometimes allows the disabled to learn job skills. In fact, the agency employs many disabled adults. It has a community reentry program for those who suffer from an acquired brain injury. By volunteering at Friends, these people are provided with a caring environment in which they can regain crucial skills needed to once again become productive members of society.

The Butcharts give God full credit for the growth of the center and for the many blessings they have received over the years. The 15th anniversary celebration of Friends of Disabled Adults and Children will be held on September 23rd at Mount Carmel Christian Church in Stone Mountain, Georgia. Mr. and Mrs. Butchart, and their staff, are to be commended for their diligence, hard work, and big hearts. The disabled individuals from the Seventh District of Georgia, who have been served by this fine organization, join me in congratulating them, and thanking them for their kindness.

**IN HONOR OF REV. KURT W. KATZMAR**

**HON. DENNIS J. KUCINICH**

**OF OHIO**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. KUCINICH. Mr. Speaker, I rise today to honor and recognize Rev. Kurt W. Katzmar for his many years of dedicated service to the First Congregational United Church of Christ.

Rev. Katzmar has been the pastor of the First Congregational United Church of Christ since May 1991. As a young boy raised in Strongsville, Rev. Katzmar attended the church he now pastors. He, along with then-pastor of Heritage Congregational Church Rev. David Hawk, founded the Berea Minister’s Emergency Relief Fund to provide assistance to Church Street Ministries. This was one of many examples of his tireless support to the City of Berea, the people of Berea, and the ministry among the people of Berea.

Rev. Katzmar, along with others in the community area was a founder of the First Church’s Church Street Ministries program. Together with Bob Breese, Rev. Katzmar joined the church’s Youth-at-Risk program and the Second Mile Thrift Shop together as one ministry. When the businesses in the 17-19 Church Street building decided to move, they designed a combined program that could move into the building, enabling an expansion of the program to include the refugee-resettle-ment and crisis-response ministries. Rev. Katzmar made presentations to the boards, committees, and congregation, and after the grant was made, the Church Street Ministries was formed and dedicated on May 14, 1994 in a ceremony led by Rev. Katzmar.

My fellow colleagues, please join me in congratulating Rev. Katzmar on all his achievements in helping to create a welcoming atmosphere in the First Congregational United Church of Christ. His love and dedication to serving the Church has touched the hearts of all in the community.
CONGRESSIONAL RECORD — Extensions of Remarks
June 29, 2001

PROTECTING AMERICAN STEEL

HON. KEN LUCAS
OF KENTUCKY
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. LUCAS of Kentucky. Mr. Speaker, America’s steel industry has been hit by an unprecedented flood of low-priced, imported steel. As a member of the bipartisan Congressional Steel Caucus, I have become increasingly frustrated as I have watched this flood of low-priced imports force our steel producers to either slow production or close up shop. That is why I was pleased by the Administration’s recent decision to heed the advice of the Congressional Steel Caucus and the pleas of the steel industry by initiating an investigation under Section 201 of the Fair Trade Act of 1974. On Friday, June 22, 2001, U.S. Trade Representative, Robert Zoellick requested the International Trade Commission (ITC) to begin that investigation.

Passage of a Section 201 means that we will now investigate the illegal dumping of foreign steel into our marketplace. If the investigation finds that unfair trade practices were used by foreign countries in the United States, we will be entitled to seek relief from imported steel—including imposing punitive tariffs and trade restrictions. In short, Section 201 is a step in the right direction. It puts foreign steel producers on notice that we will not simply stand by while unfairly subsidized steel imports leave our steel plants idle and our steelworkers without work to do.

Over 15,000 steelworkers nationwide have lost their jobs due to the current industry crisis. Since 1997, at least 18 steel companies have filed for bankruptcy. The health insurance of 70,000 steel-company retirees is now in jeopardy—that’s 70,000 Americans faced with losing health care coverage precisely at the time in their life when they can afford it the least. Although a Section 201 investigation must report its findings within 120 days, the ITC can take up to a year to figure out how to respond to unfair trade practices. America’s steel industry needs relief now. Simply put, Congress needs to enact the Steel Revitalization Act of 200, H.R. 808. And the President needs to sign it.

This bill directs the President to impose quotas, tariff surcharges, or other measures on imports. Among other things, it requires the President to negotiate enforceable, voluntary export restraint agreements. And the Steel Revitalization Act takes care of those who have suffered most from the current situation—the steelworkers who have lost their jobs. The bill establishes a program, such as the Steelworker Retiree Health Care Fund, to help these workers take care of their families. This fund would be accessible by all steel companies to provide health insurance to qualified retirees. The measures included in the Steel Revitalization Act would help families throughout Kentucky’s Fourth Congressional District, from Shelby to Boyd Counties, who depend on our domestic steel industry for their livelihood.

Our steelworkers work hard to ensure that quality American steel girds our growing communities. That’s why I, along with 220 other members of Congress, have cosponsored the Steel Revitalization Act. I am determined to keep our domestic producers in this important industry from falling victim to unfair trade with foreign nations. Along with the Section 201 investigation, the Steel Revitalization Act would go a long way toward ensuring that steel remains a vital industry in Kentucky and the nation.

PASSAGE OF ENERGY AND WATER DEVELOPMENT APPROPRIATIONS BILL

HON. TOD STRICKLAND
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. STRICKLAND. Mr. Chairman, I would like to thank our Subcommittee Chairman and Ranking Member for the hard work they put into this bill, which includes a number of programs that are very important to Southern Ohio that the funding levels in this year’s appropriation bill will allow the Department to meet its goals as announced in Columbus, Ohio on March 1, 2001 and as stated by then Governor Bush last October.

I am aware of report language accompanying the bill which discusses the non-proliferation programs with Russia and, specifically, the Highly Enriched Uranium (HEU) Agreement. I support this incredibly important foreign policy initiative and I agree with the language calling for the Russian HEU to “be reduced as quickly as possible.” I am also aware that the purchase of the 500 metric tons of Russian HEU has not always stayed on schedule, and I support exploring ways to accelerate the purchase of the downblended weapons grade material from Russia. However, I am concerned about the fact that we can deplete this program without adversely affecting the domestic uranium enrichment industry. Today, we are dependent upon this downblended Russian HEU for approximately 50 percent of our domestic nuclear fuel supply. Increasing that dependence makes no sense to me, particularly at a time when we are debating a national energy strategy calling for greater energy security in order to avoid price volatility and supply uncertainty. We must act in a manner that strikes a reasonable balance between this significant foreign policy objective and the need to maintain a reliable and economic source of domestic nuclear fuel.

I am disappointed that the Department of Energy’s Worker and Community Transition Office funding falls short of the President’s request. I am deeply concerned that the allocated funding is inadequate to address the needs of the Department of Energy workers and communities across the DOE complex who depend on these funds to help minimize the social and economic impacts resulting from the changes in the Department of Energy’s mission.

Finally, but not least of all, I am concerned about the slight reduction in the funding for the Department of Energy’s Environment, Safety and Health Office. I am hopeful that this reduction will not impact the extremely important medical monitoring program at the Portsmouth plant, which also serves to screen past and present workers at other sites throughout the DOE complex. I am hopeful that these funds will be restored as the bill moves through the conference committee. We know that many workers at DOE sites, including the one in Piketon, Ohio, handled hazardous and radioactive materials with little knowledge and, oftentimes, with inadequate safety practices. In fact, a May 2000 report issued by the Department of Energy’s Office of Public Affairs states, “Due to weaknesses in monitoring programs, such as the lack of extremity monitoring, exposure limits may have unknowingly been exceeded. In addition, communication of hazards, the rationale for and use of protective measures, accurate information about radiation exposure, and the enforcement of protective equipment use were inadequate. Further, workers were exposed to various chemical hazards for which adverse health effects had not yet been identified.”

Scaling back the medical monitoring program now would be unacceptable, knowing what we know today. Furthermore, the compensation program established last fall by passage of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), designed to compensate employees made ill by the work they performed for the government, would be weakened if workers are then denied access to medical screening. Although the EEOICPA is not a perfect bill, it would be a shame to hobble a long overdue program before it is even out of the gate.

HONORING THE LIFE OF ED SMITH

HON. SCOTT McINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. McINNIS. Mr. Speaker, I ask today to honor Ed Smith, a true hero, on behalf of Congress. Ed served as the Centennial football coach, as school district administrator, and he served as a model for how to win, how to lose gracefully, and how never to give in. He was also a man devoted to his family up until his recent death just months before his 100th birthday.

Professionally, Ed was revered by his colleagues. Central coach, principal and teacher. But most importantly, he was a hero. He was Ed Smith, a true hero, on behalf of Congress.
games were properly organized when they were in Pueblo, and that everything went smoothly and safely. For his success, he was even named honorary meet director and was honored for the work he did in the athletic arena for the community. Ed was a gifted athlete himself, and never lost his love for competition, or his skill at it. When he was 91 years old, he shot a hole-in-one with thirty-year-old golf clubs he received as a retirement gift.

During his life, Ed received many honors and awards, including having his name on the rolls of the Greater Pueblo Sports Association Hall of Fame and the Centennial Hall of Fame, but his greatest reward was that, as former coach Sollie Raso attested, “I honestly think . . . [he] and his wife, they were at peace with one another, their family, and their God.” Indeed, Ed was a dedicated husband up until his wife, Margaret Boyer Smith’s, death. He also devoted himself to his two sons, Dr. Dean B. Smith, who preceded him in death, Dr. E. Jim Smith, and to his sixteen grandchildren and nineteen great-grandchildren.

Clearly, Mr. Speaker, Ed Smith was an inspiration to his students, colleagues, family and friends throughout his life. I am proud to have this opportunity to pay tribute to such an amazing man.

HONORING AL FOWLER
HON. BOB BARR
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. BARR of Georgia. Mr. Speaker, few times each week, we open our newspapers and read about someone who is making important contributions in a particular field. It is these individuals who continue to make America a great place to live, and we should never fail to recognize their contributions. However, it is with much less frequency that we hear about people who have spent a lifetime contributing to our society in numerous different areas, always rising to the top level in each endeavor.

One such individual is Al Fowler, a native of Douglasville, Georgia. After graduating from Douglas County High School and the University of Georgia, where he earned high honors and was active in Student Government and the Future Farmers of America, Al answered his country’s call and left to fight in World War II.

During the war, Al served in the 483rd Bomber Group in Italy, where his group of B-17s suffered a casualty rate of 107%, including replacements. Although he had the option to leave after surviving 30 missions, Al Fowler stayed on the front, and stopped flying only when the war ended on the morning before his 34th mission. During his tenure, he was promoted to Brigadier General and earned a Distinguished Flying Cross for bringing his crippled aircraft back to the ground after a particularly dangerous mission.

Fortunately, Al Fowler’s time in Italy was marked by more than just war and bloodshed. It was during this time that he met his wife, who was along with the Red Cross in Italy. They went on to be married on the Isle of Capri. At that wedding, they exchanged rings made of gold confiscated from dead German soldiers by a friendly Italian jeweler, the bride wore a dress sewn from German parachute silk, and the couple departed from their wedding in a B-17 Flying Fortress flown by the groom.

After returning to Douglasville, Al won election to the Georgia General Assembly, where he served with pride and distinction for 16 years. Next, he won election to the Georgia Public Service Commission. During his political years, he truly helped develop the state of Georgia, and was instrumental in building its communications and transportation infrastructure. Later, Al went on to become Georgia’s Adjutant General, where he started the National Guard program we rely on today, and once again contributed immensely to our nation’s defense.

After leaving politics in the 1970s, Al must have still felt he had not done enough to improve his community, because he took a job as President of Douglas Country Federal Savings and Loan. During his tenure of over 30 years in banking, Al helped countless families achieve their dreams of owning a home or starting their own business. He also helped re-form the savings and loan industry after many of his competitors overextended themselves. His work to reform these institutions has made many of them stronger today than they ever were before.

Al Fowler has already been honored by his community and the State of Georgia for his service. He was recently named the 2nd recipient ever of the Chairman’s Award at our Aviation Hall of Fame in Warner Robins, Georgia. An exhibit there will honor his contributions to freedom and prosperity in America. As Al reaches his 81st birthday, and finally begins a well-deserved retirement, I hope that other members of this body will join me in thanking him for his service to our nation and our community in Georgia.

HONORING DENNIS J. KUCINICH
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. KUCINICH of Ohio. Mr. Speaker, I rise today to honor the memory of a great man who has dedicated his entire life to spreading Christian values and beliefs, Brother Nivard, for his lifetime of dedicated service.

Born Joseph Martin Stanton in 1945, Brother Nivard has served his community in countless capacities from a very young age. At age 17 he boarded a train in the Old Union Terminal of Cleveland bound for Kentucky to commit his life to Christianity. His quest for true happiness eventually led him to the Abbey of Gethsemani in Trappist, Kentucky, where he became a monk.

His love and devotion to Christian values and beliefs earned him the respect and admiration of all his peers. His friends and family describe him as a man who has inspired many. Brother Nivard is truly a man that has given back to his community in numerous ways and that has touched an incredible number of people.

Mr. Speaker, please join me in honoring the memory of a man that has reached out into our community to improve mankind, Brother Nivard. His kind spirit, gentle demeanor, and warm smile will be greatly missed.

CONGRATULATIONS FOR PHILIP A. SHARP MIDDLE SCHOOL
HON. KEN LUCAS
OF KENTUCKY
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. LUCAS of Kentucky. Mr. Speaker, I rise today to pay tribute to Butler, Kentucky’s Philip A. Sharp Middle School. At a time when our nation is faced with a troubling energy crisis, the students of Philip A. Sharp Middle School serve as a fine example for our youth. Their school was recently selected as the Middle School of the Year by the National Energy Education Development (NEED) Project, and they will attend the National Youth Awards Program for Energy Achievement here in Washington, D.C.

I am pleased to see young people take an interest in energy issues. They are learning early in life the importance of energy production and conservation. What I find even more impressive is the fact that they are taking what they have learned and, through the NEED Project’s “Kids Teaching Kids” approach, passing it on to other interested students. This kind of leadership from our middle schools means great things for Kentucky and the whole country.

I congratulate Philip A. Sharp Middle School on their recent award, and I thank them for their hard work and for setting a fine example for students across the United States. They are on the right track, and I wish them continued success.

HONORING JIM SAMUELSOHN FOR HIS LIFELONG DEDICATION TO HELPING OTHERS
HON. SCOTT McINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. McINNIS. Mr. Speaker, today I ask to honor a great man whose contributions not only to this country, but to our world, should be looked upon as an example to all. James Samuelson, longtime Glenwood Springs, Colorado resident recently passed away. He served in World War II, flourished as co-editor and publisher of The Glenwood Post, volunteered in his community, and gave his time and money to help those in countries less fortunate than our own.

Even before he began his successful career working with newspapers, Jim went into the Army Medical Corps during World War II, where he served in campaigns in North Africa, Sicily, and Italy. Afterward, he married Marilyn, a marriage that would last 55 years until his recent death. Together, he and Marilyn raised a daughter and five sons, and were the proud grandparents to fourteen and great-grandparents to three.

After the war, Jim pursued his journalism and management talent. Donna Daniels of the Glenwood Springs Post-Independent writes of Marilyn’s memory about how much more difficult it was to communicate, and how the biggest contact to the outside world was the daily paper. Jim used his skills working as co-editor and publisher of The Glenwood Post with his brother, John until 1966, after which he earned his masters of education from the University of Wyoming.
Jim was an active man all through his life. He skied, fly fished, and played and watched sports. He also volunteered with the Lions Club, American Legion, and the Mountain View Church. He even traveled to Haiti and twice to Mexico to help establish medical clinics there. In 1962 he received a fellowship to attend a three-month seminar on journalism in Quito. He and Marilyn also traveled to Europe, Israel, and Turkey, making their last trip just three years ago.

Mr. Speaker, Jim Samuelson contributed throughout his life to his community, his family, and acted beyond expectations to make a positive impact where he saw the need, and for that, I ask to pay him tribute on behalf of Congress.

SELF-DETERMINATION FOR SIKH HOMELAND DISCUSSED ON CAPITOL HILL

HON. CYNTHIA A. MCKINNEY
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Ms. MCKINNEY. Mr. Speaker, on Friday, June 15, the Think Tank for National Self-Determination attended a presentation here on Capitol Hill in the Rayburn House Office Building. The featured speaker was Dr. Gurmit Singh Aulakh, President of the Council of Khalistan. He laid out very well the strong case for self-determination for the Sikhs of Punjab, Kashmir, and for the other nations of South Asia, such as predominantly Christian Nagaland and predominantly Muslim Kashmir. During his speech, Dr. Aulakh noted that “self-determination is the birthright of all peoples and nations.” He quoted Thomas Jefferson, who wrote in our own Declaration of Independence that when a government tramples on the rights of the people, “it is the right of the people to alter or abolish it.” He also wrote, “Resistance to tyranny is obedience to God.”

India certainly is that kind of government. It has killed over 200,000 Christians in Nagaland since 1947, more than 250,000 Sikhs since 1984, over 75,000 Kashmiri Muslims since 1988, and many thousands of other minorities, including people from Assam, Manipur, Tamil Nadu, and members of the Dalit caste, the dark-skinned “Untouchables,” who are the aboriginal people of South Asia, among others. Currently, there are 17 freedom movements in India.

Just recently, a group of Indian soldiers was caught trying to set fire to a Gurdwara, a Sikh temple, in Kashmir, and some Sikh homes. This is part of India’s ongoing effort to set the minorities against each other. With 17 freedom movements with India’s borders, the minorities might support each other and help the Indian government. It is not just Sikhs who are being oppressed, but my main focus is on my own people, I am committed to freedom and human rights for all peoples and nations.

There has been a wave of oppression of Christian, since Christmas of the RSS, the pro-Fascist parent organization of the ruling BJP, murdered missionary Graham Staines and his two sons, ages 8 to 16, by burning them to death while they slept in their jeep. Nuns have been raped, priests have been killed, schools and prayer halls have been attacked. Last year, the RSS published a booklet on how to incriminate Christians and other minorities in false criminal cases.

The BJP destroyed the Babri mosque in Ayodhya and still intends to build a Hindu temple on the site. Leaders of the BJP have said that everyone who lives in India must be Hindu or must be subservient to Hinduism. They have called for the “Indianization” of non-Hindu religions.

Is that a democratic country? U.S. Congressman Edolphus Towns pointed out that “the mere fact that (Sikhs) have the right to choose their oppressors does not mean they live in a democracy.” Congressman Dana Rohrabacher said that “the minorities—India might as well be Nazi Germany.”

Sikh martyr Jarnail Singh Bhindranwale said that “If the Indian government attacks the Golden Temple, it will lay the foundation of Khalistan.” He was right. On October 7, 1987, the Sikh Nation declared the independence of its homeland, Punjab, Khalistan. India claims that there is no support for Khalistan. It also claims to be democratic despite the atrocities. Then why not simply put the issue of independence to a referendum to the democratic way? What are they afraid of?

Self-determination is the right of all people and nations. American taxpayers are helping India and stop its aid until all the people of South Asia are allowed to live in freedom. Thank you for giving me this opportunity. I stand in this chamber to sing for Khalistan, Kashmir, Nagaland, and all the nations of South Asia.
HON. ROBERT WEXLER
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. WEXLER. Mr. Speaker, I would like to place in the Congressional Record the following letter I received from A. Mackevitch the President of the Jewish Congress of Kazakhstan in support of H.R. 1318, legislation that would authorize President Bush to extend normal trade relations treatment to the products of Kazakhstan.

JEWISH CONGRESS OF KAZAKHSTAN

Dear Mr. Speaker,

I am pleased to submit this letter to you on behalf of the Jewish Congress of Kazakhstan, a group that represents Jewish dwellers in all regions of Kazakhstan. Founded in 1998, we support the state and the principles of a new Kazakhstan, which are based on legal equality of all citizens, national independence, non-aggression, and non-aggression policies. Since our foundation, we have worked to raise the standard of living of Jews in the country and to strengthen stability and interethnic concord both in the country and the whole region. We proceed from the fact that a country which liberated the minds of people would be to a larger extent successful in achieving prosperity than a society burdened with heavy heritage of the past, such as amendment of Jackson–Vanik.

In this context the Jewish community of Kazakhstan calls upon you to exert your influence in freeing Kazakhstan from this rudi ment of the past, which would undoubtedly strengthen relationship between our countries and testify to the fact that voices of tens of thousands of the Kazakh Jewish have been once again heard by our American friends.

Yours Sincerely,

A. Mackevitch
President.
In 2000, more than half of graduating seniors received their first choice for residency, and 80 percent received one of their top two choices. These figures are higher than the national average.

GEORGETOWN'S COMMITMENT TO COMMUNITY SERVICE
Fr. O’Donovan has funded faculty-development grants for interdisciplinary research and course development and made a priority the creation of new endowed faculty positions. At the same time, Fr. O’Donovan’s administrative appointments have been the first women to serve as senior academic officers. The Ryan Chair in Metaphysics and Moral Philosophy, and a chair to support the scholarship and teaching of a visiting Jesuit scholar.

From Fall 1988 through Fall 2000 the number of Main Campus full-time faculty (both tenure track and non-tenure track) increased 37%. From Fall 1988 through Fall 2000, the number of full-time faculty at the Georgetown University Law Center increased 38%. Georgetown Law Center has the largest faculty in the United States.

RESEARCH AND SCHOLARSHIP
Georgetown’s faculty include some of the nation’s leading scholars in a wide array of fields—from linguistics to constitutional law to cancer research to health care policy. The Center for Social Justice Research, the Law Center again received–

DIVERSITY AT GEORGETOWN
Georgetown also has made significant strides promoting diversity within the faculty and administration. Among Fr. O’Donovan’s administrative appointments has been the first woman to serve as President of the University, Provost, Dean of Georgetown College, Dean of the School of Medicine, Vice President and Treasurer, and President and General Counsel.

The work of the faculty committees, in September 2000, Fr. O’Donovan launched a series of initiatives aimed at enhancing Georgetown’s Catholic and Jesuit identity, including five endowed chairs in the Catholic Intellectual tradition.

In 1995, Fr. O’Donovan initiated a University-wide dialogue about ways in which the University might further deepen its Catholic and Jesuit identity. As a part of that process, in 1997, he charged a faculty-led task force to make specific recommendations about steps Georgetown could take to enhance its identity for the future. That task force filed its report in 1998. Fr. O’Donovan then invited the entire University community, with specially selected faculty and staff, to participate in the discussion and to consider the recommendations.

Inaugurating a second chair in Catholic Social Thought using a new endowment obtained by the University—the first chair, inaugurated last academic year, is currently held by the Rev. John P. Langan, S.J.—

Promoting dialogue among faculty about Jesuit pedagogy through the work of the Center for New Designs in Learning and Scholarship (CNLDS), a new center that will make these discussions a part of its overall mission.

Supporting Jesuit recruitment through the establishment of a standing committee of Jesuits and other faculty members;

Enhancing faculty diversity with increased funding for recruitment—Georgetown has already successfully recruited three new minority faculty members;
Building Support for the Next Century

In October 1998, Georgetown formally launched its $750 million Third Century Campaign, to support faculty, enhance facilities and financial aid resources and strengthen the University’s identity. The Board approved the increase of the campaign goal to $1 billion in September 2000. As of December 31st, 2000, the campaign already had secured more than $640 million in gifts and pledges, including a gift of $30 million to name the Robert H. Smith School of Business.

Contributions to the D.C. Community

Georgetown’s fulfillment of its commitment to the Jesuit educational principle of educating “men and women for others” has also grown in breadth and depth. Of the more than 180 programs dedicated to community service, several have been launched in the past decade, including:

- The Center for Social Justice Research, Teaching and Service, and the Center for Urban Research and Teaching on the Main Campus;
- The Law Center’s Office of Public Interest and Community Service; and
- Collaborative ventures such as the Georgetown Public Policy Institute’s D.C. Community Policy Forum, a research partnership between the University and District of Columbia agencies.

Fr. O’Donovan created a series of grants to support faculty in their efforts to create new and enhance existing service-learning courses and to undertake research projects that directly benefit the District and its residents. Two of those grants expanded the work done by Georgetown faculty and students in the Archdiocese’s Catholic elementary and secondary schools, which are also served by Georgetown’s large corps of DC Reads literacy tutors. Dedicated as well to responsible non-profit citizenship, the University also made a $1 million founding investment to help launch City First Bank, which opened in 1999 to assist individuals and businesses in under-served areas of the city.

Fr. O’Donovan led the development of a comprehensive strategy to build stronger relationships between the University community and its surrounding neighbors. He created the position of Assistant Vice President for External Relations to promote improved communication and collaboration between the University and the local D.C. community. In recent years, Georgetown has decreased the number of undergraduate students living off campus, instituted special bulk trash pick-ups at the beginning and close of each academic year, and advanced its plans to build a new 780 bed residence hall complex.

Finally, to serve the children of faculty, students, and staff, the Hoyas Kids Learning Center, a child development and pre-school facility, was established in 1997 on the Main Campus. Scholarships for families in need are funded by the Office of the President.

HONORING STANTON ENGLEHART

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 28, 2001

Mr. McINNIS. Mr. Speaker, I stand here today to honor a man who stretches the imagination, and who uses paint to express what words cannot about the beauty of our nation. Stanton Englehart has been providing the world with refreshing insight into nature for over forty years, and has been an active participant in bringing art to communities around Colorado.
Stanton Englehart has long been recognized as one of the most prominent painters of the Southwest. He carries the honor of Professor Emeritus of Fine Art at Fort Lewis College, and his popularity and enthusiasm has brought him international recognition. He says, “I hope my paintings express some of the beauty and mystery that is hidden in the earth and the sky above it... The paintings are most about energy and its power as a creative force in all things.”

Stanton selflessly shares that energy with just about anyone who asks him. Charlie Langdon of The Durango Herald, says that when asked by an audience member at a lecture if he would be willing to exhibit in more Colorado arts centers, he answered, “Just call me, and tell me how much wall space you have. I'll pack a show for you and truck it to your door.” Incredibly, Stanton turns out “about a hundred paintings a year. Many of them are enormous.” All told, he has created more than 1200 paintings, some 21 feet wide. To ensure that those without the funds to enjoy his art can do so, he donates many paintings to charity.

Stanton has made a huge impact in Colorado and, and has brought international attention to the glorious landscapes of Colorado. He works with the art community to act as a model for the young and the old, for the artistic and the admirer. Mr. Speaker, I ask to thank Stanton Englehart on behalf of Congress for his ongoing contributions to this important creative aspect of Colorado. He deserves our congratulations.

TRIBUTE TO MELANIE STOKES

HON. BOBBY L. RUSH
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. RUSH. Mr. Speaker, I rise today to honor the memory of Melanie Stokes and all women who have suffered in silence from postpartum depression and psychosis with the introduction of the Melanie Stokes Postpartum Depression Research and Care Act.

Chicago native, Melanie Stokes was a successful pharmaceutical sales manager and loving wife of Dr. Sam Stokes. However, for Melanie, no title was more important than that of mother. Melanie believed motherhood was her life mission and fiercely wanted a daughter of her own. This dream came true on February 23, 2001 with the birth of her daughter, Sommer Sky. Unfortunately, with the birth of her daughter, Melanie entered into a battle for her life with a devastating mood disorder known as postpartum psychosis. Despite a valiant fight against postpartum psychosis, which included being hospitalized a total of three times, Melanie jumped to her death from a 12-story window ledge on June 11, 2001.

Melanie was not alone in her pain and depression. Each year over 400,000 women suffer from postpartum mood changes. Nearly 80 percent of new mothers experience a common form of depression after delivery, known as “baby blues.” The temporary symptoms of “baby blues” include mood swings, feelings of being overwhelmed, inability to sleep, and a sense of vulnerability. However, a more prolonged and pronounced mood disorder known as postpartum depression affects 10 to 20 percent of women during or after giving birth. Even more extreme and rare, postpartum psychosis, whose symptoms include hallucinations, hearing voices, paranoia, severe insomnia, extreme anxiety and depression, strikes I in 1,000 new mothers.

Postpartum depression and psychosis afflicts new mothers indiscriminately. Many of its victims are unaware of their condition. This phenomena is due to the inability of many women to self-diagnose their condition and society’s general lack of knowledge about postpartum depression and psychosis and the stigma surrounding depression and mental illness.

Untreated, postpartum depression can lead to self-destructive behavior and even suicide, as was the case with Melanie. As seen recently in the case of Andrea Yates of Houston, Texas who drowned her five children, postpartum depression and psychosis can also have a dire impact on one’s family and society in general.

In remembrance of Melanie Stokes and all the women who have suffered from postpartum depression and psychosis, and as their families and friend who have stood by their side, I am introducing the Melanie Stokes Postpartum Depression Research and Care Act which will:

Expand and intensify research at the National Institute of Mental Health and National Institute of Mental Health with respect to postpartum depression and psychosis, including increased discovery of treatments, diagnostic tools and educational materials for providers;

Provide grants for the delivery of essential services to individuals with postpartum depression and psychosis and their families, including enhanced outpatient and home-based health care, inpatient care and support services.

It is my hope that through this legislation we can ensure that the birth of a child is a wonderful time for the new mother and family, and not a time of mourning over the loss of yet another mother or child.

INSULAR AREAS OVERSIGHT AVOIDANCE ACT

HON. ROBERT A. UNDERWOOD
OF GUAM
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. UNDERWOOD. Mr. Speaker, today I would like to reintroduce the Insular Areas Oversight Avoidance Act, legislation I previously introduced during the 106th Congress. This legislation, which is cosponsored by Congresswoman Donna CHRISTIAN-DONNA of Guam, and Resident Commissioner Anibal ACEVEDO-AVILA of Puerto Rico, seeks to hold the federal government more accountable in the manner that federal policy is developed towards the insular areas, which include Guam, the Virgin Islands, the Commonwealths of Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands. The bill would require that the Office of Management and Budget explain any omission of any insular area from treatment as part of the United States in any policy statement issued by the Office of Management and Budget on federal initiatives or legislation.

The impetus for the bill is to improve federal-territorial relations and to encourage greater use of government resources in a more cost-efficient manner. Given our geographical distance from Washington, D.C., and our political status as territories, it is very difficult for insular area officials to sometimes be heard at the federal level. We face repeated challenges in ensuring that the insular areas are either included in federal law or policies on a daily basis, whether it be international treaties, Presidential Executive Orders, proposed legislation by the Executive Branch or Congressional Members, or federal regulations.

It is my belief that the U.S. insular areas should be considered at the outset of the development of federal policies, including Presidential initiatives. I believe that such consideration would be a more effective way of ensuring that all Americans—in the fifty states, the District of Columbia, and the insular areas—are treated fairly.

The failure of the federal government to contemplate the impact of the insular areas in federal initiatives often results in the need for insular area governments to expend an exorbitant amount of resources and energy to either rectify the “oversight” through legislation or through extensive and sometimes futile negotiations with federal agency officials.

An example of such a situation is the way in which U.S. Treasury Department officials negotiate international tax treaties. There are around 75 international tax treaties that the U.S. has negotiated with other countries, including foreign investment withholding rates. The failure of the U.S. to either include the “oversight” in these treaties, there are several definitions used by U.S. negotiators. The most commonly employed definition explicitly excludes Guam and the other insular areas by name. Another definition explicitly includes the 50 states and the District of Columbia as comprising the “United States.”

Currently, the Congress is considering legislation I introduced, H.R. 309, the Guam Foreign Investment Equity Act, which is trying to rectify Guam’s exclusion in these international tax treaties. H.R. 309 provides the Government of Guam with the authority to tax foreign investors at the same rates as states under U.S. tax treaties. The bill passed the House on May 1, and is awaiting Senate consideration.

I would not have to be pushing for the Guam Foreign Investment Equity Act if the federal government had contemplated its impact on the insular areas, including Guam, when the current U.S. tax treaties with other countries were negotiated.

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a 30% withholding rate on Guam. As 75% of Guam’s commercial development is funded by foreign investors, such an omission has deprived Guam of attracting foreign investment opportunities.

Other territories under U.S. jurisdiction already remedied this problem or are able to offer alternative tax benefits to foreign investors through delinkage, their unique covenant agreements with the federal government, or through federal statute. Guam, therefore, is the only state or territory in the United States which is unable to provide this tax benefit or to offer alternative tax benefits for foreign investors.

The Insular Areas Oversight Avoidance Act would be helpful to insular area governments and the federal government by requiring that situations like the U.S. negotiations on international tax treaties are for the good of all U.S. jurisdictions in the country, not just the fifty states. I understand that the U.S. government is currently renegotiating with Japan on the tax treaty between our two countries. While I hope that Guam is not excluded from being part of this treaty, the record of U.S. negotiators on previous tax treaties does not provide me with any level of comfort. This is a perfect example of why the bill I have introduced today is needed.

Klamath Basin Government-Caused Disaster Compensation Act

HON. WALLY HERGER OF CALIFORNIA IN THE HOUSE OF REPRESENTATIVES Thursday, June 28, 2001

Mr. HERGER. Mr. Speaker, principles of fairness and justice demand that the government not force some people to bear burdens, which should rightfully be borne by the public as a whole. However, that is precisely what is happening in the Klamath Basin in northern California and southern Oregon because of the Endangered Species Act (ESA), and today I rise, joined by my Oregon colleague, Congressman Greg Walden, to introduce legislation to address that.

The ESA has strayed far from its original mission. It was never intended to sacrifice human health and safety and economic well-being. Yet, the fact remains that under the guise of species protection, constitutionally protected property rights are being trampled, local economies are being destroyed, families are being forced into bankruptcy and, in many cases, human health and safety are being jeopardized. There is little consideration given to the human species under the ESA. Once a species is “listed,” its needs must come first—before the rights and livelihoods of American people. As it is currently being implemented, the ESA requires species protections at any cost.

Regrettably, rural Western communities are disproportionately bearing the burdens and costs associated with species protection, burdens which should rightfully be borne by the American public as a whole. The zero-water decision that was recently handed down in the Klamath Basin is the “poster child” for precisely these kinds of injustices. Farmers in this rural area were told on April 6, 2001 that there would be no Klamath Project water for agriculture this year, because, in the opinion of a few government biologists, it was needed to protect two species of fish that may or may not be endangered.

The decision does not come without significant social and economic impacts. The Klamath River Basin supports thousands of families and has one of the largest remaining small family farmers and ranching operations and scores of related businesses. This agricultural area generates in excess of $250 million in economic activity annually. The annual value of crops produced is estimated at more than $110 million. All of this human activity has come to a grinding halt because of an ESA mandated decision that is based only on speculation and guesswork. Preliminary estimates place total economic damage in the neighborhood of $220 million. Regrettably, all of the costs and economic hardships associated with this decision will be borne solely by the people who live and work in the Klamath Basin, many of them veterans of World War II who were promised a permanent supply of water and land, and their sons and daughters.

It is important to note that this is not simply a Klamath Basin problem. Nor is it a new problem, or one that is specific to the agricultural industry in general, or to federal project irrigators in particular. Small businesses throughout the Sierra Nevada mountains in California face potentially debilitating economic losses because of forest management restrictions associated with extremely dubious concerns about the status of the California spotted owl. Water users throughout California have faced extreme hardship as the government has exercised its authority to regulate water deliveries to a mere percentage of their contract amounts because of pumping or other water use restrictions driven by the ESA. A rural area in my northern California Congressional District has incurred millions of dollars in extra costs on critically important infrastructure improvements because of ESA-mandated mitigation. In this same area a much-needed high school construction project has been delayed at taxpayer expense because of the ESA. There are many examples, but the fact remains that people are suffering disproportionately because of the implementation of the ESA.

These requirements and restrictions are, simply, an unfunded federal mandate. The federal government should not force some to bear the costs, but should bear the burden itself, or, if it cannot pay or is not willing to pay, then it should avoid the action altogether. Or, it must find some middle ground. This is simple accountability.

For these reasons, Mr. Speaker, I rise today to introduce legislation—the “Klamath Basin Government-Caused Disaster Compensation Act.” It requires the Secretary of the Interior to fully compensate the individuals of the Basin who have been economically harmed as a result of the restrictions that have been placed on the operations of the Klamath Project. Such Payments would come from within the Department of Interior’s budget. This legislation sends a resounding message to Washington that if the federal government is going to force this kind of social and economic harm on rural American through its laws, it will be held accountable. And if it rebukes those costs, it erodes the question of whether this kind of species protection—recklessly imposing requirements that may or may not benefit species, but that will certainly carry significant costs to real people—is a goal all Americans truly want, and if so, whether they’re willing and prepared to share the impacts.

Ultimately, the ESA itself must be modernized if we are to ensure that people and communities come out of these proceedings with cherished resources in their hands, and that people have been significantly harmed as the direct result of the federal government’s actions in the Klamath Basin, and while the long-term social and other hidden impacts from this decision can never be fully mended, fairness and justice demand that the federal government move forward in a way that rectifies the economic harm that it has caused.

TRIBUTE TO McNEIL FAMILY FOR 2001 NATIONAL WETLANDS AWARD

HON. SCOTT McINNIS OF COLORADO IN THE HOUSE OF REPRESENTATIVES Thursday, June 28, 2001

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to offer my congratulations to a couple that has taken extensive efforts to promote land stewardship, wetlands conservation, research and education in the Monte Vista area of Colorado. Mike and Cathy McNeil have truly exemplified the ideals honored by the 2001 National Wetlands Award of the Natural Resources Conservation Service, the U.S. Environmental Protections Agency and the Environmental Law Institute and I would like to add my thank you and appreciation to their labors.

Nestled on the edge of Rock Creek just south of Monte Vista and neighboring by the Monte Vista National Wildlife Refuge, the McNeil ranch persists as a fourth-generation operation. Understanding the importance of responsible development and the intersection with environmental preservation, the McNells launched the Rock Creek Heritage Project—an effort which protected nearly 15,000 acres of farm and ranch land in the Rock Creek Watershed. This collaborative effort, involving 27 landowners, accentuates 5 aspects including wildlife and wetland enhancement, training in holistic management, community building and support for value-added marketing of agricultural products. Extending beyond land matters, the McNells have adopted innovative calving patterns to provide their 800 mother cows warmer birthing periods during June and July rather than throughout the cooler winter months utilized by most ranchers in the area. In all of these endeavors the McNells have exhibited innovation, excellence and outstanding effort.

Mr. Speaker, Mike and Cathy have been united in matrimony for 20 years and have the blessing of their daughter Kelly who is 14 years of age. The teachings of her parents are allowing Cathy to value and preserve the heritage from which she comes. Through the extraordinary contributions of the McNells, wetland protection and land stewardship has been heralded and an example has been established for others to follow in order obtain ecological health while not compromising agricultural productivity. The National Wetlands Award will be one of many awards that the McNells have garnered from their hard work—alongside the distinct recognition of being the Colorado Association of Soil Conservation District’s Conservationists of the Year in 1999.
and the 2001 Steward of the Land Award issued by the American Farmland Trust. The McNeils deserve to be applauded on a job well done and I, along with my colleagues, thank them for their sustained efforts in this critically important realm and foundation to life.

**JUNIOR ACHIEVEMENT**

**HON. JOEL HEFLEY**

**OF COLORADO**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. HEFLEY. Mr. Speaker, I rise to speak today about an organization, which is headquartered in my district and has had an immeasurable impact on America. The history of Junior Achievement is a true testament to the indelible human spirit and American ingenuity. Junior Achievement was founded in 1919 as a collection of small, after-school business clubs for students in Springfield, Massachusetts.

As the rural-to-city exodus of the populace accelerated in the early 1900s, so too did the demand for workforce preparation and entrepreneurship. Junior Achievement students were taught how to think and plan for a business, acquire supplies and talent, build their own products, advertise, and sell. With the financial support of companies and individuals, Junior Achievement recruited numerous sponsoring agencies such as the New England Rotarians, Boy Scouts, Girl Scouts, Boys & Girls Clubs the YMCA, local churches, playground associations and schools to provide meeting places for its growing ranks of interested students.

In a few short years JA students were competing in regional expositions and trade fairs and rubbing elbows with top business leaders. In 1925, President Calvin Coolidge hosted a reception on the White House lawn to kick off a national fundraising drive for Junior Achievement's expansion. By the late 1920s, there were nearly 800 JA Clubs with some 9,000 Achievers in 13 cities in Massachusetts, New York, Rhode Island, and Connecticut.

During World War II, enterprising students in JA business clubs used their ingenuity to find new and different products for the war effort. In Chicago, JA students won a contract to manufacture 10,000 pants hangers for the U.S. Army. In Pittsburgh, JA students developed a specially lined box to carry off incendiary devices, which was approved by the Civil Defense and sold locally. Elsewhere, JA students made baby incubators and used acetylene torches in abandoned locomotive yards to obtain badly needed scrap iron.

In the 1940s, leading executives of the day such as S. Bayard Colgate, James Cash Penney, Joseph Sprang of Gillette and others helped the organization grow rapidly. Stories of Junior Achievement’s accomplishments and of its students soon appeared in national magazines of the day such as TIME, Young America, Collier’s, LIFE, the Ladies Home Journal and Liberty.

In the 1950s, Junior Achievement began working more closely with schools and saw its growth increase five-fold. In 1955, President Eisenhower declared the week of January 30 to February 5 as “National Junior Achievement Week.” At this point, Junior Achievement was operating in 139 cities and in most of the 50 states. During its first 45 years of existence, Junior Achievement enjoyed an average annual growth rate of 45 percent.

To further connect students to influential figures in business, economics, and history, Junior Achievement started the Junior Achievement National Business Hall of Fame in 1975 to recognize outstanding leaders. Each year, a number of business leaders are recognized for their contribution to the business industry and for their dedication to the Junior Achievement experience. Today, there are 200 laureates from a variety of businesses and industries that grace the Hall of Fame.

By 1982, Junior Achievement's formal curricula offering had expanded to Applied Economics (now called JA Economics), Project Business, and Business Basics. In 1988, more than one million students per year were estimated to take part in Junior Achievement programs. In the early 1990s, a sequential curriculum for grades K–6 was launched, catalyzing the organization into the classrooms of another one million elementary school students.

Today, through the efforts of more than 100,000 volunteers in the classrooms of America, Junior Achievement reaches more than four million students in grades K–12 per year. JA International takes the free enterprise message of hope and opportunity even further to more than 1.5 million students in 111 countries. Junior Achievement has been an influential part of many of today's successful entrepreneurs and leaders. Junior Achievement's success is truly the story of America—the fact that one idea can influence and benefit many lives.

Mr. Speaker, I am proud to have Junior Achievement in my district and proud of its many successes over the years. It is my hope this great organization continues to prosper and benefit many in the years to come.

**FHA-INSURED HOSPITAL CONVERSION AND REINVESTMENT ACT**

**HON. JOHN J. LaFALCE**

**OF NEW YORK**

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, June 28, 2001**

Mr. LAFALCE. Mr. Speaker, today I am introducing the “FHA-insured Hospital Conversion and Reinvestment Act.” This legislation authorizes HUD to reinvest profits from FHA loan insurance programs, including those for health care, in FHA-insured hospitals.

The Department of Housing and Urban Development (HUD) insures billions of dollars of loans for hospitals under the FHA Section 242 hospital loan program. According to the Administration’s fiscal year 2002 budget, FHA hospital and health care loan insurance programs are projected to make a profit for federal hospital loan insurance programs for the first time in 20 years.

In addition, all FHA loan programs combined will make a profit of over $2.7 billion next year for the federal taxpayer.

Currently, all of these FHA profits are used to increase the federal budget surplus. The legislation I am introducing today would authorize HUD to use some of these profits generated by FHA to pro-actively assist FHA-insured hospitals, either for the purpose of converting excess hospital capacity to related health care use or for the purpose of paying debt service for FHA-insured hospitals.

Conversion of excess capacity helps the hospital which converts and the community it serves. It allows better use of hospital space in a way that is more responsive to the needs of the local community. Some conversions also improve the abilities of all hospitals in the local area to meet community health needs by reducing over-capacity and allowing some flexibility in the use to which the existing infrastructure can be put. Under my proposed legislation, conversion of excess hospital capacity is authorized for a range of purposes, including supportive housing for the elderly, assisted living, and nursing care needs that may be more substantial for many communities than in-hospital care.

The authority under legislation to use FHA surplus to pay debt service for FHA-insured hospitals is intended to safeguard FHA's pre-existing investment. Such use is contingent on a determination by HUD that such assistance would reduce the risk of default and loss on the FHA-insured loan, and would improve the financial soundness of the hospital assisted. This new authority has the effect of giving HUD similar loss mitigation tools to those it currently has with respect to single-family and multi-family FHA-insured loans.

Congress has long recognized that pro-active loss mitigation is of financial benefit to the FHA insurance fund. For example, HUD gives wide latitude to servicers of FHA-insured single-family loans to restructure debt, including making partial claims, in order to forestall foreclosures. This can be of advantage to FHA, since foreclosures typically create a much larger loss to the fund.

The ability to conduct loss mitigation with respect to hospital loans is further complicated by the fact that many FHA-insured hospital loans are structured as public bond offerings. This makes it very difficult to restructure loans, without calling the bonds. Allowing HUD to advance funds to pay debt service obviates the need to call bonds, while allowing HUD to pro-actively address looming financial problems, and avert foreclosure.

This legislation would help FHA-insured hospitals nationwide, but would be of particular benefit to hospitals within the state of New York, which has one of the highest percentages of FHA-insured hospitals nationwide.

Hospitals within our state have adapted to a wide range of challenges, including Medicare cuts, squeezed reimbursement rates from private insurers, and the transition to a de-regulated environment. Community hospitals, with their lack of access to capital, face particular challenges. The least we can do is reinvest profits from federal hospital loans in the hospitals which have generated these profits.

This legislation does precisely that. I urge Congress to adopt it and would welcome the support of my colleagues.
TRIBUTE TO LIMERICK TOWNSHIP

HON. JOSEPH M. HOFFELE
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. HOFFELE. Mr. Speaker, I rise today to congratulate Limerick Township in Montgomery County, Pennsylvania on its 275th Anniversary. Native Americans of the Delaware tribe were the original inhabitants of this area followed later by William Penn, who in 1682, purchased large tracts of land from the Native Americans. Early settlers from Wales, Germany, Holland, and France, soon began to settle here. Many important and prominent families began to arrive such as the Brookes, Evans, Kendalls, and the Ickes.

A petition to form the township of “Lymmerick” was filed in Philadelphia in 1726 and may still be found in City Hall. Education was of major importance to the citizens of the township. From the beginning many schools were constructed. There were eight one-room schools in the township in 1848 and that number continued to grow throughout the rest of the century. Currently there are four major schools within the township.

Limerick Township has been a farming community for much of its history. Development grew slowly though steadily until the construction of the Pottstown Expressway in 1985 which connects Philadelphia with King of Prussia.

As one of the oldest townships in Montgomery County, Limerick Township is now home to 18,000 residents, a nuclear generating station, an airport, and several golf courses. It is one of the fastest growing areas within Montgomery County.

I am proud to represent such an extraordinary township. This anniversary should serve as a lasting tribute to the men and women who built Limerick and now make it their home. Their dedication has made this township the wonderful place it is.

HONORING THE LIFE AND WORK OF JOHN L. NINNEMANN

HON. SCOTT McINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. McINNIS. Mr. Speaker, I stand here before you today to honor a man that has made significant contributions to the artistic community, John L. Ninneman. John has not only created a legacy through his photography, but he has also shaped the future with the minds he has taught at Adams State College.

John is currently the Dean of Arts and Sciences at Fort Lewis College. He started his extensive education at St. Olaf College; he then went on to receive his Master’s degree at Colorado State and his Post-doctoral training at Memorial Sloan Kettering Cancer Center in New York City. With his vast knowledge John became an accomplished research immunologist. His work at Colorado University created a love for the State, and John eventually returned to Colorado to become a professor at Adams State College. John proved to be a great professor, and was loved by both students and fellow professors. During his time there he served as Chair of Biology, and Dean of the School of Science, Math and Technology. In the little spare time that the John had he developed a love photography.

John started what would be an illustrious career in photography by documenting one-room schoolhouses in and around the San Luis Valley. He then began to photograph the rock canyons and mesas in the Four Corners Region. His photography has won numerous awards, and helped make others aware of the beauty in Colorado that needs to be preserved. John’s artistic ability does not stop with his photos; he is also a talented violinist who performs with chamber groups, and at fundraisers. It seems that John’s talent and ability is boundless.

The contributions that John has made to the artistic community of the State of Colorado, not to mention the nation, is why I believe, Mr. Speaker, that John Ninneman is worthy of the praise of Congress. The black and white photos that he has taken will live forever as a reminder to all how beautiful the United States is to all that view them. I thank John for sharing his amazing talents with the public.

“RENEWABLE ENERGY AND ENERGY EFFICIENCY ACT OF 2001” ("REEA")

HON. LYNN C. WOOLSEY
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Ms. WOOLSEY. Mr. Speaker, this week I introduced the “Renewable Energy and Energy Efficiency Act of 2001” ("REEA"). This bill is a blueprint for the House Science Committee as we develop legislative priorities for the renewable energy and energy efficiency programs at the Department of Energy (DOE). The Committee’s role in the national energy debate is unique, because we are required to envision the future energy needs of our country, and determine the direction of DOE research, development and demonstration (RD&D) programs. As the Ranking Member on the Committee’s Energy Subcommittee, this bill is my statement on our priorities.

We must establish a more level playing field for renewable energy sources, so we can reduce our reliance on coal and fossil fuels. We must encourage the development of ‘green industries’ through increased emphasis on energy efficiency technologies. We must expand those energy sources that will contribute to a more sustainable, long-term energy future. Increased federal investment in renewable energy sources and energy efficiency technologies is smart public policy because for every dollar invested in current DOE sustainable energy programs, the benefits total $200. My vision for our energy future is that by the year 2020, twenty percent of our energy will be generated from renewable sources. Environmental groups agree, because we cannot continue to focus our priorities on limited fossil fuel sources. Unfortunately, our federal commitment to energy efficiency will help us meet this goal has declined significantly since 1980. This bill is a bold effort to reverse this funding scenario by outlining a robust R&D program and fund an aggressive energy efficiency agenda.

The comment I’ve heard most often from the renewable energy community is that a critical element of any successful RD&D program is a stable funding stream that gradually increases over time. That’s why over the next five fiscal years, “REEA” authorizes total funding for DoE renewable energy programs at $3.735 billion, and energy efficiency at $5.185 billion with an additional $300 million for NASA to work on aircraft energy efficiency. If Americans are to have a secure energy future, with renewable, clean and environmentally-friendly energy sources, we must invest in renewable energy sources and make great strides in energy efficiency, so we can reduce our overall energy consumption. This means increasing support for wind, solar, geothermal and biomass energy sources.

We must also ensure that promising renewable energy and energy efficient technologies, like hydrogen fuel cells, are given commercialization assistance so that individual consumers can afford to use them. My bill establishes a competitive grant program at DOE so that private sector entities can help advance development of new technologies. Many creative and entrepreneurial individuals need only access to financial assistance to demonstrate the successful application of their renewable energy or energy efficiency technology. That’s why this bill directs that at least fifty percent of the $1 billion provided for such assistance goes to small businesses and startup companies.

Mr. Speaker, for too long we have overlooked renewable energy sources when setting our energy priorities. Now is the time for a responsible energy policy that makes significant investments in clean energy sources to supplement current energy supply. We must ensure that we prevent a repeat of the energy shortages Californians and West Coast residents now face. “REEA” will be a big step toward protecting our environment, and guaranteeing a better future for our children.

IN SUPPORT OF THE LOW INCOME FAMILIES FLOOD INSURANCE ACCESS ACT

HON. GENE GREEN
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. GREEN of Texas. Mr. Speaker, as we witnessed the damage wrought by Tropical Storm Allison after it wept through Texas and up the East Coast, the importance of the National Flood Insurance Program (NFIP) really hit home. Thousands of my constituents suffered substantial flood damage to their homes and businesses, but some of these losses were mitigated because they had federal flood insurance coverage.

Unfortunately, not all my constituents who needed flood insurance could afford to purchase a policy. Because of a recent redraw of Houston’s Flood Insurance Rate Map (FIRM) many of my low-income folks were brought into the 100-year flood plain, but could not afford the insurance. As a consequence of my constituents’ experience, I rise today to introduce the Low Income Families Flood Insurance Access Act.
This legislation helps bridge the insurance gap between those that can afford a flood policy and those that cannot. The bill would provide discounted flood insurance over a five-year term for low-income homeowners or renters whose primary residence is placed within a Special Flood Hazard Area (floodplain) by a reduction of the Flood Insurance Rate Map (FIRM). If their property is worth no more than $75,000, they would be eligible to receive a 50% discount on their flood insurance premiums for a five-year period.

It also provides for limited retroactivity if their residence is placed within the floodplain within two years of the enactment of the legislation; otherwise, the five years would begin upon the placement of the property within the flood plain. I hope that this legislation will not only increase participation in the National Flood Insurance Program (NFIP), but make its program more affordable for the economically disadvantaged. It provides an incentive for those who are most vulnerable to huge losses in floods to get the protection they need at a price they can afford.

The NFIP plays a crucial role in lessening the impact of a major flooding disaster, but to make the program operate most effectively we need greater participation. I believe my legislation will extend the helping hand associated with flood insurance down to those people in greatest need of assistance.

Mr. Speaker, I hope that we can speed this bill through the 107th Congress.

AMERICAN SCHOLARS OF CHINESE ANCESTRY

SPEECH OF
HON. PATSY T. MINK
OF HAWAII
IN THE HOUSE OF REPRESENTATIVES

Monday, June 25, 2001

Mrs. MINK of Hawaii. Madam Speaker, I rise in strong support for H. Res. 160, which calls upon the Government of the People’s Republic of China to immediately and unconditionally release Dr. Shaomin, Dr. Gao Zhan, Wu Chunyan, and all other American scholars of Chinese ancestry who have been imprisoned and denied the basic right of meeting with their families and lawyers, and the right to a fair trial.

The detainees have even been denied the basic right of meeting with their families and lawyers. Dr. Li Shaomin, Dr. Gao Zhan, Wu Chunyan, and Dr. Meharry have been unjustly imprisoned and denied due process. We must insist on their immediate release.

The harassment and persecution of intellectuals is yet another attempt by the Chinese government to stifle any freedom of expression among its people. China’s leaders should be ashamed of its government’s abysmal record of human rights abuses but instead remain indifferent to the condemnation of the world community. The Chinese government regularly violates the International Covenant on Civil and Political Rights, which it signed in October 1998.

We must make sure that the Chinese government understands that it will pay a price for flouting international norms of behavior. This is why I support resending Permanent Normal Trade Relations with China and going back to an annual review. I would hope, moreover, that China’s human rights record will be a factor in the International Olympic Committee’s choice of which country will host the 2008 Olympics.

I urge all my colleagues to send a strong message to the Chinese government by unanimously passing this important resolution.

IN RECOGNITION OF DR. MARK JOHNSON

HON. ROBERT MENENDEZ
OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Dr. Mark Johnson, who will be recognized by the New Jersey Medical School’s Family Practice Residency Program for his outstanding achievements in the fields of family medicine and medical research. Dr. Johnson will be honored on Friday, June 29, 2001, at a private reception at the Landmark II in East Rutherford, New Jersey.

Mark Johnson graduated from Coo College in Cedar Rapids, Iowa, where he majored in Black Literature. He furthered his studies by graduating from the University of Medicine and Dentistry at New Jersey’s Medical School in Newark, New Jersey. After graduating from medical school, Dr. Johnson spent his family practice residency at the University of South Alabama in Mobile, Alabama. In addition, he was a Robert Wood Johnson Clinical Scholar at the University of North Carolina at Chapel Hill, where he received his Masters Degree in Public Health.

Dr. Johnson’s notable career as a family physician and medical researcher has earned him widespread praise from his peers and colleagues. The American Medical Association has recognized him on four separate occasions for his diligent work and exceptional endeavors, by presenting him with the Physician’s Recognition Award. New York Magazine designated him one of the best doctors in the State of New York in 1999 and 2000.

Currently, Dr. Johnson is the Chair of the Department of Family Medicine at the University of Medicine and Dentistry at New Jersey’s Medical School in Newark. Prior to his tenure at New Jersey’s Medical School, Dr. Johnson taught at the University of North Carolina at Chapel Hill, the University of South Alabama, and Meharry Medical College in Nashville, Tennessee.

Today, I ask my colleagues to join me in honoring Dr. Mark Johnson for his distinguished service and commitment to family medicine.

GINA UPCOHRCH RECEIVES COMMUNITY HEALTH LEADER AWARD

HON. DAVID E. PRICE
OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. PRICE of North Carolina. Mr. Speaker, I want to offer my congratulations to Gina Upchurch, one of 10 recipients of the 2001 Robert Wood Johnson Community Health Leader Award. Ms. Upchurch has earned this honor for her pathbreaking work with the Senior PHARMAssist Program based in Durham, North Carolina.

Each year, the Community Health Leadership Program recognizes ten individual who have found innovative ways to bring health care to communities whose needs have been ignored or unmet. Ms. Upchurch was selected for this prestigious recognition from a field of 577 nominees.

As founder and executive director of Senior PHARMAssist, Ms. Upchurch created a model to help seniors on limited incomes purchase expensive medications. PHARMAssist monitors the medications of their clients to help prevent life-threatening interactions and provides financial aid to those on limited incomes.

The program has helped more than 2,600 seniors get the medications they need and has educated over 800 older adults about safer usage of medication.

The counseling and support provided by PHARMAssist works. A recent study conducted by the University of North Carolina-Chapel Hill found that emergency room visits and over-night hospital stays had decreased by almost a third for seniors who had been in the program for at least one year.

Ms. Upchurch graduated from UNC with degrees in pharmacy and public health. She served in the Peace Corps in Botswana before returning to North Carolina to write her master’s thesis, a policy analysis which recommended a program to provide health care to seniors throughout the state. This laid the groundwork for what eventually became Senior PHARMAssist. She now oversees a $500,000 budget and has written a manual to help other communities establish a similar program.

Gina Upchurch has improved health care and helped those in need in our community. I am proud to recognize her achievements today.

DIRECT AIR SERVICE BETWEEN LOS ANGELES INTERNATIONAL AND WASHINGTON’S REAGAN NATIONAL AIRPORTS

HON. JANE HARMAN
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Ms. HARMAN. Mr. Speaker, today I have been joined by a bipartisan group of my colleagues in introducing legislation to preserve air service between Washington’s Reagan-National Airport (DCA) and Los Angeles International Airport (LAX).

This legislation is necessary because the Department of Transportation (DOT) decided to eliminate this critical service last Friday. Instead of permitting American Airlines, which purchased TWA, to have the TWA slots to continue to fly this route, the Department awarded them to Alaska Airlines, which will use them to start nonstop service between Washington and Seattle.

The Department’s decision disappointed tens of thousands of Californians and other passengers who have come to rely on this route and its connections to Bakersfield, Fresno, Monterey, Oakland, Palm Springs, San
Mr. Speaker, I urge my colleagues to join me in paying tribute to Yakov Smirnoff on the 15th anniversary of his citizenship. He truly embodies what it means to be an American. As we prepare to celebrate the 4th of July, the United States Congress can all join with Yakov and say, “What a country!”

HONORING YAKOV SMIRNOFF ON THE 15TH ANNIVERSARY OF HIS CITIZENSHIP

HON. CHRISTOPHER COX
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. COX. Mr. Speaker, I rise today to pay tribute to Yakov Smirnoff, who will celebrate his 15th anniversary as a United States citizen on July 4, 2001.

When Yakov left the Soviet Union in 1977, he arrived in the U.S. with less than $100 in his pocket. But like so many new immigrants, Yakov quickly found a way to put his talents to use in his new country—and in only a few years he became one of America’s most recognized comedians.

Yakov’s brand of comedy appealed to so many Americans because it carried real insight. He poked fun at the daily consequences of Soviet tyranny, while displaying a remarkable American irreverence for our own foibles (“In the Soviet Union, I’d line up for three hours just to get a tasteless piece of meat and some stale bread; but in America, you can walk into any fast-food restaurant and get the same thing right away”). But he also reminded us of how fortunate we are to live in a free and democratic nation (“What a country!” became his signature line). In fact, Yakov has said that his comedy has helped him “share his attempts at becoming a real American with the audience.”

Yakov’s dream of becoming an American citizen was finally fulfilled on July 4, 1986, in a ceremony held at the Statue of Liberty. Describing his joy at the occasion, Yakov says: “I suddenly had a new revelation. You can go to Italy but never become Italian. You can go to France but never become French. But you can come to America and become an American.”

When freedom came to the formerly captive peoples of the Soviet Empire, Yakov joked that “the end of the KGB eliminated 100 percent American irreverence for our own foibles—(30 percent of my punch lines).” But in fact Yakov enjoys continued success in his comedic routines. In 1992, he moved to Branson, Missouri, where he owns his own comedy theater and performs to perennially sold-out houses.

Yakov says he will continue to relish having a job that allows him to encourage Americans to cherish the freedom we have to laugh at ourselves—and yes, at our government. “I’ve learned that the secret to being happy is discovering your gift and allowing the opportunity to share it with the world,” he has said. “As I found out for myself, it can be quite a ride before your gift defines itself and allows you to realize what it is.”

The Great Lakes rank among the most precious environmental treasures in the world. The five lakes hold almost 20 percent of the fresh water in the world, and they hold almost 90 percent of the United States’ fresh water supply. The United States’ share of Great Lakes shoreline is longer than the coastlines of either the East Coast or West Coast of our nation. Furthermore, the lakes’ ecological diversity impacts ecosystems in eight states as well as much of Canada.

All five of the Great Lakes rank among the top eighteen largest lakes in the world. In fact, Lake Superior has the largest surface water of any freshwater lake in the world, and it holds more volume than all of the other Great Lakes combined. We should not put these treasures at risk for a small amount of fossil fuel.

Some colleagues want to compare drilling in the Great Lakes to drilling in ocean waters, but this line of thought compares apples to oranges.

First, the water exchange rate in the lakes is very slow, because they are essentially self-contained. A spill under these circumstances would devastate the ecology for many years, and it simply should not be risked.

Second, drilling in the lakes threatens fresh waters not salt waters, and a spill would compromise drinking water for millions.

Third, drilling in and along the lakes would yield only minuscule increases in energy supply for our nation.

When the risks are so high and rewards so low, it makes no sense to move forward with plans to implement drilling of any kind.

Finally, I wish to highlight an often overlooked fact about Michigan’s relationship with the Great Lakes. They are the foundation of our state’s robust tourism industry. In fact, tourism is the second largest industry in our state.

Americans from throughout the Midwest and beyond come to our lakeshores for recreation and relaxation. Just as Florida fears significant negative economic consequences when fuel...
spills threaten her coastline, so does Michigan.

The Great Lakes supply fresh water to many. They offer recreational resources to millions. They contribute to the ecology of a significant portion of the United States. We would be foolish to endanger.

Vote yes on this amendment.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2002

SPEECH OF
HON. BETTY MCCOLLUM
OF MINNESOTA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, June 27, 2001

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2311) making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes:

Ms. McCOLLUM. Mr. Chairman, I strongly oppose drilling of any kind beneath the Great Lakes and urge my colleagues to support the Bonior amendment.

Visit Minnesota's North Shore and you will immediately know why.

Lake Superior is a constant source of wonder. It helps shape our landscape and climate, it supports our economy and it enhances our quality of life.

Mr. Chairman, water is a precious resource in my state. We have over 10,000 lakes. Lake Superior, of course, is the most identifiable of Minnesota's lakes, its familiar wolf head shape visible from outer space.

Did you know the greatest of the Great Lakes (Lake Superior) is over 31,000 square miles, the same size as the entire state of Maine? Lake Superior also holds more fresh drinking water than all the other Great Lakes combined—Lake Ontario, Lake Michigan, Lake Huron, and four Lake Erie's.

Each year, millions of people from all over the world visit the lake in Minnesota for sightseeing, fishing, scuba diving and boating. Lake Superior is also important to the economies of Minnesota and the entire Upper Midwest. Duluth, Minnesota and Superior, Wisconsin make up the busiest international inland port in America.

Our lakes, especially Lake Superior, are not isolated.

We are a part of a great chain of lakes. What happens in one lake does have an impact in all of the Lakes.

Mr. Chairman, the Great Lakes provide over 35 million people with their fresh drinking water. These lakes constitute twenty percent of the Earth's fresh water, 95% in the United States.

Why would anyone put our nation's largest source of fresh drinking water at risk?

Data from Michigan Department of Environmental Quality shows that only 28.5% of one day's consumption of natural gas and 2.2% of one day's consumption of oil in the United States has been produced. Not enough for even one day has been produced in over 20 years.

The House last week wisely stopped the President's proposal to drill off the shores of Florida and in our national monuments. The Great Lakes are no less important.

I oppose drilling of any sort for oil and natural gas beneath the Great Lakes. Not because we do not need to find additional resources. We do. These lakes are just too vital to too many families and it's not worth the risk.

We are making progress in using energy more efficiently and reducing our reliance on oil and natural gas through energy efficiency technology and conservation. We must make bigger investments in current programs. Investments don't have to cost money either. We can and we must reduce our consumption by supporting wind and solar power and renewable fuels like ethanol.

Future generations depend on us not to jeopardize our nation's greatest natural resource. An oil spill or any related disaster on the shores of a Great Lake would impact the fresh drinking water for 35 million people. And for what? Less than a day's worth of oil and natural gas.

The Great Lakes are important to this nation. They are important to my state and to millions of families. They have been crucial in the historical and economic development of our communities and they continue to play a significant role in Minnesota, the nation and the world.

I urge my colleagues today to protect the drinking water of future generations. I urge my colleagues to support this important amendment.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2002

SPEECH OF
HON. CHRISTOPHER H. SMITH
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Wednesday, June 27, 2001

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2311) making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes:

Mr. SMITH of New Jersey. Mr. Speaker, I would like to express my strong support for setting aside sufficient funding for Beach Protection projects, and to keep the current language in the bill which states that 85 percent of the initial construction costs of beach repletion projects are to be financed by the Federal Government, and 35 percent of the costs are to be paid by states and local governments.

The fact of the matter is that our beaches are national assets that deserve national protection. Just like our national parks, our beaches are not enjoyed solely by those who live nearby or on them. Just the opposite is true: our beaches are visited by tens of millions of people from all over the country. Foreign tourists come from all parts of the globe to visit our coasts and beaches.

My good friend, Representative TOM TANCREDO of Colorado, has offered an amendment today to strike language in the bill that directs the Secretary of the Army to honor existing Federal contracts with States, counties, and cities throughout coastal America. Under the gentleman's amendment, the Federal government would essentially shirk its responsibility, and shuffle it onto the shoulders of state and local governments, by switching the cost share ratio to 35 percent Federal/65 percent local.

I rise in opposition to this amendment, because it is bad national policy, as well as bad for local taxpayers in coastal communities.

Mr. Speaker, the record is clear: states and local governments have consistently shown their commitment to assist in the preservation and replenishment of beaches along the Nation's coastlines. The proposed Federal shift in cost sharing would result in the delay or elimination of several important Corps of Engineers projects, which would potentially increase the property damage from hurricanes and severe storm events. Additionally, states and localities would not be able to absorb the increased costs without raising taxes or cutting other vital priorities.

Our nation's beaches contribute to our national economy—four times as much as many people visit our nation's beaches each year than visit the next stage of the Manasquan Inlet Project, which extends from the Manasquan Inlet to the Barneget Inlet and includes the beaches of several coastal towns in Ocean County, which are in my district.

Additionally, the Manasquan Inlet is absolutely crucial the fishing industry and the general economic health of the New Jersey metropolitan shore. It is through the Manasquan Inlet that many large deep-sea fishing vessels gain their entry to the ocean and where they can return with their catch. Nearly 22,000 people are employed by the fishing industry in New Jersey, with an economic output of almost $2.1 billion. Protecting the beaches and preventing erosion benefits more than just the tourism industry.

Mr. Speaker, I urge all members of Congress to protect our nation's beaches, coastal communities and tourism industry by keeping the Federal/Local cost share at 65 percent Federal, 35 percent local.

Vote "no" on the Tancredo amendment.

PCBS IN THE HUDSON RIVER

HON. MAURICE D. HINCHHEY
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, June 28, 2001

Mr. HINCHHEY. Mr. Speaker, I rise today to commend to my colleagues the following article written by Ned Sullivan on the issue of
PCB contamination in the Hudson River of New York. Ned is the highly respected executive director of Scenic Hudson, Inc., a 37 year-old nonprofit environmental organization dedicated to protecting and enhancing the scenic, natural, historic, agricultural and recreational treasures of the Hudson River and its valley. Ned and I have worked together for many years in pursuit of removing sediment contaminated by polychlorinated biphenyls (PCBs) from the “hot spots” in the upper Hudson River, in order to reduce threats to public health, revive local economies, reopen recreational opportunities along the river. I appreciate Ned’s thoughtful analysis of this important issue.

PCBs Pose Major Health Threat to New York City, and Beyond
(By Ned Sullivan)

For decades masses of the invisible, virtually indestructible cancer-causing PCBs that General Electric dumped from its factories on the Upper Hudson have moved down the majestic river, reaching dangerous levels in New York Harbor. They are still coming, clinging fiercely to the river’s shifting silt, threatening the health of millions.

There is no question that GE has the responsibility for cleaning up the worst of them at their source, as the U.S. Environmental Protection Agency has ruled after years of intensive study. In doing so the EPA employed methodologies endorsed by the General Accounting Office (GAO) and worldwide peer review.

GE has mounted a massive advertising and public relations effort aimed at reversing the EPA’s decision. It has a force of seventeen high-powered lobbyists hard at work on the matter in Washington. For good measure the company’s legal battalions have challenged provisions of the U.S. Superfund cleanup laws as unconstitutional.

However these are the facts of the matter:

According to the EPA, the Agency for Toxic Substances and Disease Registry (U.S. Public Health Service) and the World Health Organization among others, PCBs are “an acute and chronic health hazard.” Humans exposed to the lethal substances are subject to skin, liver and brain cancers; respiratory impairments; severe acne-like skin rashes; impaired immune systems, adult reproductive system damage, and perhaps worst of all neurological defects and developmental disorders in the children of exposed females.

David Carpenter, the highly respected former dean of the School of Public Health at SUNY/Albany, has stated: “Our understanding of hazards from PCBs is growing much more rapidly than PCB levels are declining. So over time, the net reason for concern has only gotten greater, not less. Any time you decrease the IQ of your next generation, that’s the ultimate pollution.”

The PCBs enter the food chain through fish and move upward rapidly through animals and humans. EPA health risk assessments reveal that humans eating just one meal of fish from the Hudson River per week are one thousand times more susceptible to cancer. The risk of other deleterious effects also increases significantly. The New York State Department of Health advises women of childbearing age and children under age 15 not to eat any fish from anywhere in the Hudson.

Unfortunately large numbers of people, including the underprivileged who fish for subsistence and not sport; ethnic groups whose cultures embrace fishing, and even upscale sportspersons whose enjoyment includes cooking the catch, continue to eat Hudson fish in quantity despite the warning signs posted up and down the river.

PCBs build up in the environment, the technical word is bioaccumulate, becoming more concentrated as they move up the food chain to the human level. Less than a month ago, scientists retained by the New York State Department of Environmental Conservation (DEC) released new evidence that the PCBs have been moving from the river’s bottom onto land, where they are contaminating soil and animals along the banks, and in residential back yards.

This stands in sharp contrast to the advertising campaign GE has been waging on the upper Hudson, showing abundant, flourishing wildlife flying over and splashing in a sparkling river.

The public has not been taken in by GE’s massive disinformation campaign. A statistically valid (plus or minus 3.5 percent) Marist College poll sponsored by Scenic Hudson reveals that 84 percent of those interviewed said the river should be cleaned up. That qualifies as a landslide.

There is no question that the Hudson must be cleaned up. Scenic Hudson has interviewed senior representatives from more than two dozen scientific, academic, governmental and environmental institutions and found every one of them in favor of a clean-up. GE stands alone in insisting that science is on its side.

It is high time General Electric honored its obligations to the public.
HIGHLIGHTS
Senate passed Patients' Bill of Rights.

Chamber Action
Routine Proceedings, pages S7127–7291

Measures Introduced: Twenty bills and eight resolutions were introduced, as follows: S. 1138–1157, S. Res. 118–123, and S. Con. Res. 57–58.
Pages S7193–94

Measures Reported:
Page S7193

Measures Passed:
  Patients' Bill of Rights: By 59 yeas to 36 nays (Vote No. 220), Senate passed S. 1052, to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage, after taking action on the following amendments proposed thereto:
  Adopted:
  By a unanimous vote of 98 yeas (Vote No. 208), Santorum Amendment No. 814, to protect infants who are born alive.
  Pages S7127–28
  By a unanimous vote of 98 yeas (Vote No. 209), DeWine Modified Amendment No. 842, to limit class actions to a single plan.
  Pages S7127, S7128–29
  By a unanimous vote of 98 yeas (Vote No. 213), Thompson Modified Amendment No. 819, to require the exhaustion of administrative remedies before a claimant goes to court.
  Pages S7127, S7132–33
  Nickles Amendment No. 850, to apply the patient protection standards to Federal health benefits programs.
  Pages S7128, S7142–45
  Ensign Modified Amendment No. 849, to provide for genetic nondiscrimination.
  Pages S7128, S7135, S7161–62
  Thompson Amendment No. 853, to clarify the law which applies in a State cause of action.
  Pages S7160, S7162
  Warner Further Modified Amendment No. 833, to limit the amount of attorneys' fees in a cause of action brought under this Act.
  Pages S7127, S7155–57, S7162
  Reid (for Kennedy/Gregg) Amendment No. 860, to make technical and conforming amendments.
  Page S7185

Rejected:
  Nickles Amendment No. 846, to apply the bill to plans maintained pursuant to collective bargaining agreements beginning on the general effective date. (By 54 yeas to 44 nays (Vote No. 211), Senate tabled the amendment.)
  Pages S7130–31
  Ensign Amendment No. 848, to provide that health care professionals who provide pro bono medical services to medically undeserved or indigent individuals are immune from liability. (By 52 yeas to 46 nays (Vote No. 212), Senate tabled the amendment.)
  Pages S7128, S7131–32, S7135
  Allard Amendment No. 821, to exempt small employers from causes of action under the Act. (By 55 yeas to 43 nays (Vote No. 215), Senate tabled the amendment.)
  Pages S7138–42, S7145–46
  Craig Amendment No. 851, to express the sense of the Senate regarding making medical savings accounts available to all Americans. (By 53 yeas to 45 nays (Vote No. 216), Senate tabled the amendment.)
  Pages S7146–49
  Santorum Modified Amendment No. 841, to dedicate 75 percent of any awards of civil monetary penalties allowed under this Act to a Federal trust fund to finance refundable tax credits for uninsured individuals and families. (By 50 yeas to 46 nays (Vote No. 217), Senate tabled the amendment.)
  Pages S7149–54

By 42 yeas to 54 nays (Vote No. 218), Kyl Amendment No. 854, to permit choices in costs and damages.
Pages S7164–67, S7172–73

By 36 yeas to 59 nays (Vote No. 219), Frist/Beaux Amendment No. 856, in the nature of a substitute.

Nominations Confirmed: Senate confirmed the following nominations:

Neal A.McCaleb, of Oklahoma, to be an Assistant Secretary of the Interior.

4 Air Force nominations in the rank of general.

7 Army nominations in the rank of general.

1 Marine Corps nomination in the rank of general.

2 Navy nominations in the rank of admiral.

Routine lists in the Air Force, Army, Marine Corps, Navy.

Nominations Received: Senate received the following nominations:

Henrietta Holsman Fore, of Nevada, to be Director of the Mint for a term of five years.

Marion Blakey, of Mississippi, to be Chairman of the National Transportation Safety Board for a term of two years.

Marion Blakey, of Mississippi, to be a Member of the National Transportation Safety Board for a term expiring December 31, 2005.

Jim Nicholson, of Colorado, to be Ambassador to the Holy See.

Charlotte L. Beers, of Texas, to be Under Secretary of State for Public Diplomacy.

Dennis L. Schornack, of Michigan, to be Commissioner on the part of the United States on the International Joint Commission, United States and Canada.

Randal Quarles, of Utah, to be United States Executive Director of the International Monetary Fund for a term of two years.

Carol D’Amico, of Indiana, to be Assistant Secretary for Vocational and Adult Education, Department of Education.

Judith Elizabeth Ayres, of California, to be an Assistant Administrator of the Environmental Protection Agency.

George McDade Staples, of Kentucky, to be Ambassador to the Republic of Cameroon, and to serve concurrently and without additional compensation as Ambassador to the Republic of Equatorial Guinea.

1 Navy nomination in the rank of admiral.

Routine lists in the Army, Navy.

Executive Communications:

Statements on Introduced Bills:

Additional Cosponsors:

Amendments Submitted:

Additional Statements:

Notices of Hearings:

Privilege of the Floor:

Record Votes: Thirteen record votes were taken today. (Total—220)

Committee Meetings

No committee meetings were held.
House of Representatives

**Chamber Action**

The House was not in session. Pursuant to the provisions of H. Con. Res. 176, it has adjourned for the 4th of July District Work Period and will next meet on Tuesday, July 10 at 2 p.m.

**Committee Meetings**

No Committee meetings were held.
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Extensions of Remarks, as inserted in this issue

Hefley, Joel, Colo., E1280
Herger, Wally, Calif., E1279
Hinchey, Maurice D., N.Y., E1284
Hobson, David L., Ohio, E1289
Hoefel, Joseph M., Pa., E1281
Kanjorski, Paul E., Pa., E1286
Kildee, Dale E., Mich., E1283
Kucinich, Dennis J., Ohio, E1271, E1273
LaFalce, John J., N.Y., E1280
Lucas, Ken K., E1272, E1273
McInnis, Scott, Colo., E1271, E1272, E1273, E1277, E1279, E1283, E1286
McKee, Cristina A., Ga., E1274
Maloney, James H., Conn., E1280
Menendez, Robert N.J., E1282
Miller, Dan, Fla., E1267
Miller, Gary G., Calif., E1249, E1253
Mink, Patsy T., Hawaii, E1282
Morella, Constance A., Md., E1263, E1265
Norton, Eleanor Holmes, D.C., E1275
Otter, C.L. "Butch", Idaho, E1287
Paul, Ron, Tex., E1262, E1264
Payne, Donald M., N.J., E1249, E1253
Pitts, Joseph R., Pa., E1285
Price, David E., N.C., E1280
Rahall, Nick J., W.Va., E1258
Rangel, Charles B., N.Y., E1281, E1283, E1285, E1287
Roukema, Marge, N.J., E1270
Rush, Bobby L., Ill., E1278
Schakowsky, Janice D., Ill., E1262, E1264
Simmons, Rob, Conn., E1286
Smith, Christopher H., N.J., E1284
Strickland, Ted, Ohio, E1272
Thomas, William M., Calif., E1245
Thompson, Mike, Calif., E1237
Udall, Mark, Colo., E1245
Udall, Tom, N.M., E1276
Underwood, Robert A., Guam, E1278
Waxman, Henry A., Calif., E1255
Weller, Jerry, Ill., E1281
Wexler, Robert, Fla., E1275
Wilson, Heather, N.M., E1266
Wolf, Frank R., Va., E1255
Woolsey, Lynn C., Calif., E1281

Next Meeting of the SENATE
Monday, July 9

12 noon

Next Meeting of the HOUSE OF REPRESENTATIVES
Tuesday, July 10

2 p.m.

Program for Monday: After the recognition of two Senators for speeches and the transaction of any morning business (not to extend beyond 1 p.m.), Senate will begin consideration of S. 1077, Supplemental Appropriations.